

Sines, et al. v. Kessler, et al., 3:17CV72, 11/16/2021

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
3 CHARLOTTESVILLE DIVISION

4 ELIZABETH SINES, ET AL., CIVIL CASE NO.: 3:17CV72
5 NOVEMBER 16, 2021, 8:59 AM
JURY TRIAL, DAY 17

6 Plaintiffs,
vs.

7 Before:
HONORABLE NORMAN K. MOON
8 UNITED STATES DISTRICT JUDGE
JASON KESSLER, ET AL., WESTERN DISTRICT OF VIRGINIA

9 Defendants.
10

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Sines, et al. v. Kessler, et al., 3:17CV72, 11/16/2021

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14	0117	18	18
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3	EXHIBIT:	Marked	Received
4	1531	19	19
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6	1516	19	19
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8	3457	19	19
9	0145	19	19
10	0147	19	19
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12	0146	19	19
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14	3455	19	19
15	3453	19	19
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17	0144	19	19
18	3055	19	19
19	3056	19	19
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3 EXHIBIT: Marked Received

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7	3471	19	19
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10	3960B	88	88
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1 (Proceedings commenced, 8:59 a.m.)

2 THE COURT: Good morning. Call the case, please.

3 THE CLERK: Yes, Your Honor. This is Civil Action
4 Number 3:17-cv-72, Elizabeth Sines and others versus Jason
5 Kessler and others.

6 THE COURT: Plaintiffs ready?

7 MS. KAPLAN: We are, Your Honor, although -- oh,
8 sorry.

9 There are a number of housekeeping matters I thought
10 we should raise.

11 THE COURT: Defendants ready?

12 MR. KOLENICH: Yes, sir.

13 MR. SPENCER: Same.

14 THE COURT: Before we begin, I will remind everyone
15 that under Standing Order 2020-12 and 2013-8, the Court's
16 prohibition against recording or broadcasting court proceedings
17 remains in force. Attorneys, parties and their staff and any
18 members of the public or press accessing this proceeding today
19 may not record or broadcast it. That means no photography, no
20 using any video or audio recording device, no rebroadcasting,
21 livestreaming or otherwise disseminating any live or recorded
22 video or audio of this proceeding.

23 All right. Okay. What is the matters we need to
24 take up?

25 MS. KAPLAN: A few things I thought would be worth

1 raising, Your Honor, as we get close to the end. First of all,
2 we didn't hear from defense. We asked them yesterday who their
3 witnesses were for today after Mr. Cantwell. We don't know.
4 We'll make it work, but obviously it would be helpful in the
5 future to get notice on that.

6 Two, we would like to raise -- we sent a letter in
7 this morning. Mr. Cantwell has asked to recross, essentially,
8 Devin Willis and Natalie Romero. For the reasons stated in our
9 letter, we think that would be inappropriate, but obviously
10 knowing the scope of what's left would be helpful.

11 Similarly, Your Honor, Mr. Spencer has asked to call
12 essentially a new witness. She was previously on the list.
13 She was withdrawn and now she's being renotediced by Mr. Spencer,
14 and we have a letter on that.

15 MR. SPENCER: I'm sorry to have made you write a
16 letter, but I have also dropped it for reasons.

17 MS. KAPLAN: Well, that makes that very easy, Your
18 Honor.

19 A couple of issues on documents. We made a -- let me
20 do the easy one. We have a chart for all the medical records
21 that were going to be admitted. We've been speaking overnight
22 with Mr. Campbell. He requested two redactions which we are
23 happy to make. So we will provide a chart to Ms. Wheeler of
24 all those exhibits so she has them. I'm not sure we need to
25 read them out loud. It's a long list, but whatever Your Honor

1 prefers.

2 Similarly, we asked plaintiffs -- and I can hand it
3 up, Your Honor, if you'd like -- to stipulate to the applicable
4 UVA fire policy for having open flames on campus that was in
5 effect in August 2017. We have a custodian of records
6 affidavit from UVA saying this was the policy. I believe
7 Mr. Jones objects to that but I'm happy to either make a letter
8 submission or hand it up.

9 And we're wondering, Your Honor, so we can be
10 prepared, if Your Honor intends to have a charging conference,
11 if that's your normal practice, so we can be prepared for that.

12 THE COURT: I'll give you a chance, but I hope I'll
13 be able to give you a pretty good set of instructions so that
14 we won't spend a lot of time talking about it.

15 MS. KAPLAN: That's what I assumed, Your Honor.
16 Thank you.

17 Then finally -- I couldn't read my notes, but now I
18 understand -- Joshua Smith yesterday proposed to us last night
19 that if we stipulate to a certain video recording of
20 Mr. Heimbach, then he will not -- no longer be seeking to
21 re-call either Mr. Parrott or Mr. Heimbach. We are working
22 with him on that, but again, as you see, we're limiting very
23 much what's left to do in our discussions with the other
24 parties.

25 And thank you, Mr. Spencer, about Hannah. So I

1 really think we've made a lot of progress on those issues, Your
2 Honor.

3 THE COURT: All right.

4 MR. SPENCER: I have one issue, Your Honor. So it's
5 possible that the plaintiffs will rest today or by this
6 afternoon. And so I will be presented as a *pro se* litigant
7 with this unusual task of presenting evidence and seemingly
8 cross-examining myself. So I have asked a number of people and
9 received a number of different answers, but perhaps I should
10 just ask you: Would you allow me to present from the podium as
11 opposed to being in the witness box? That just seems -- it was
12 how the plaintiffs presented evidence. Of course, I'll be
13 doing a little bit more. I will be testifying to the evidence
14 as well.

15 THE COURT: I don't have any problem. Any objection
16 to that? I don't see any problem with that.

17 MR. SPENCER: Okay.

18 MS. KAPLAN: I'm sorry, Your Honor, I apologize.
19 Mr. Bloch was telling me something in my other ear. What's the
20 proposal?

21 THE COURT: He would like to, when he presents his
22 case, instead of being in the witness box, be at the podium, or
23 the lectern.

24 MS. KAPLAN: I don't think there's any problem with
25 that, Your Honor. You obviously can't be in both places at

1 once, Mr. Spencer.

2 MR. SPENCER: True. And I won't be asking myself
3 questions as well.

4 MR. CANTWELL: Yeah, I had intended to cross-examine
5 myself, so to speak, from that position as well, because I have
6 some exhibits that I'd like to bring up. And I have only had
7 just the briefest moment to skim through the letter from
8 plaintiffs' counsel regarding my desire to call Ms. Romero and
9 Mr. Willis.

10 I said when I was questioning them that I'd be
11 seeking to call them during my case in chief. And part of the
12 reason that I did that is because plaintiffs seem to be
13 mistaken stating that I had these exhibits at the time. I was
14 actually still attempting to get my data into the courtroom.

15 THE COURT: You can re-call them, but it's not a time
16 to go back and go through things already covered, just cover
17 new material.

18 MR. CANTWELL: Understood.

19 MS. KAPLAN: Your Honor, I would ask that you read
20 our letter because everything he's seeking to question them
21 about is things that were already covered on their
22 cross-examination.

23 THE COURT: Well, he hasn't had time to read the
24 letter.

25 MS. KAPLAN: I understand that. I just would like

C. Cantwell - Cross

1 consideration of those issues. Happy to argue it.

2 THE COURT: Anything else?

3 All right. Call the jury.

4 (**Jury in, 9:07 a.m.**)

5 THE COURT: You may be seated. Good morning, ladies
6 and gentlemen. Glad to have you back.

7 Okay. You were on the stand.

8 CHRISTOPHER CANTWELL, CALLED BY THE PLAINTIFFS,

9 PREVIOUSLY SWORN

10 THE COURT: You may proceed.

11 MR. CAMPBELL: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CAMPBELL:

14 Q Good morning, Mr. Cantwell. I represent James Fields.
15 Prior to August 12, 2017 had you ever heard the name James
16 Fields before?

17 A No.

18 Q Had you ever met or communicated in any way to your
19 knowledge with James Fields prior to August 12, 2017?

20 A No.

21 Q Having seen his pictures all over social media, blogs,
22 websites, that sort of thing, does that refresh your
23 recollection that you ever interacted with Mr. Fields at any
24 political event or at any other time?

25 A I have certainly never met James Fields before I saw him

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1 in the Albemarle Charlottesville Regional Jail.

2 MR. CAMPBELL: Thank you, sir. I don't have any
3 additional questions.

4 THE COURT: All right. Anyone else?

5 MR. CANTWELL: Nobody else? Then I'll take the
6 podium?

7 THE COURT: Not yet. If there are -- any redirect?
8 If not, you may step down.

9 MR. CANTWELL: Step down?

10 THE COURT: Yes.

11 All right. Next witness?

12 MS. KAPLAN: Your Honor, I thought our understanding
13 was that Mr. Cantwell was going to go now and complete the
14 Cantwell and then we would close.

15 THE COURT: No, he's going to put his case on after
16 he makes his Rule 50 motion.

17 MS. KAPLAN: Okay. So in that case, Your Honor, we
18 have two very short videos we'd like to show to the jury and
19 then we rest.

20 THE COURT: All right. I need to read this modified
21 instruction on sanctions.

22 MS. KAPLAN: Do you want to do it after the videos,
23 Your Honor?

24 THE COURT: No. I'll read it prior.

25 MS. KAPLAN: Your Honor, Mr. Spalding thought we were

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1 proceeding the other way, so he needs a few minutes. So in the
2 meantime, if that's okay, I will read the medical records for
3 Ms. Wheeler and then Your Honor can make the instruction and we
4 should be ready to play the videos. Does that work?

5 Okay. So, Ms. Wheeler, by stipulation among the
6 parties and subject to redaction on a couple of documents,
7 plaintiffs admit the following -- or seek to admit the
8 following medical records. I'm going to do it plaintiff by
9 plaintiff.

10 Plaintiff Seth Wispelwey, Plaintiffs' Exhibit 3274,
11 3280, 3285, and 3287. And there are two additional documents
12 that contain certifications for some of those records. Those
13 are 3278 and 3288. The other certifications are contained in
14 the documents already mentioned.

15 (Plaintiff Exhibits 3274, 3280, 3285, 3287, 3278, and
16 3288 admitted.)

17 MS. KAPLAN: For Plaintiff Thomas Baker, Plaintiffs'
18 Exhibit 130, Plaintiffs' Exhibit 135B, Plaintiffs'
19 Exhibit 3358, Plaintiffs' Exhibit 116, Plaintiffs' Exhibit 117,
20 Plaintiffs' Exhibit 3659, Plaintiffs' Exhibit 3837, and the
21 certifications are Plaintiffs' Exhibit 3449, 135A, 3447 -- if
22 I'm speaking too quickly, Ms. Wheeler, I apologize -- 3660 and
23 3836.

24 (Plaintiff Exhibits 130, 135B, 3358, 116, 117, 3659,
25 3837, 3449, 135A, 3447, 3660, and 3836 admitted.)

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1 MS. KAPLAN: Now, for Plaintiff Marcus Martin, the
2 medical records are Plaintiffs' Exhibit 1525, 1527, 1529, 1530,
3 1531, 1532, and the certifications for Mr. Martin are at 1516,
4 3458, 3457.

5 (Plaintiff Exhibits 1525, 1527, 1530, 1531, 1532,
6 1516, 3458, and 3457 admitted.)

7 MS. KAPLAN: For Marissa Blair, the exhibits are
8 Plaintiffs' Exhibit 145, 147, 143, 146 and 144. The
9 certifications with respect to Ms. Blair are Plaintiffs'
10 Exhibit 3454, 3455, 3453, and 148.

11 (Plaintiff Exhibits 145, 147, 143, 146, 144, 3454,
12 3455, 3453, and 148 admitted.)

13 MS. KAPLAN: For Natalie Romero, the records are
14 Plaintiffs' Exhibit 3055, 3056, 3057, 3058, 3478, and 3651.
15 The certifications for Ms. Romero are Plaintiffs' Exhibit 3943
16 and 3567.

17 (Plaintiff Exhibits 3055, 3056, 3057, 3058, 3478,
18 3651, 3943, and 3567 admitted.)

19 MS. KAPLAN: For Plaintiff Chelsea Alvarado, the
20 medical records are Plaintiffs' Exhibit 47, Plaintiffs'
21 Exhibit 48, and Plaintiffs' Exhibit 45. The corresponding
22 certifications are Plaintiffs' Exhibit 3471 and 3393.

23 (Plaintiff Exhibits 47, 48, 45, 3471, and 3393
24 admitted.)

25 MS. KAPLAN: And finally, for Plaintiff April Muñiz,

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1 the medical records are Plaintiffs' Exhibits 1745, 1757, 1798,
2 1799, Plaintiffs' Exhibit 3470, and 3477. And the relevant
3 certifications for Ms. Muñiz are Plaintiffs' Exhibit 1745,
4 Plaintiffs' Exhibit 1757, Plaintiffs' Exhibit 1800, Plaintiffs'
5 Exhibit 3470, and Plaintiffs' Exhibit 3477.

6 (Plaintiff Exhibits 1745, 1757, 1798, 1799, 3470,
7 3477, and 1800 admitted.)

8 MS. KAPLAN: And if I may approach, Your Honor, to
9 make it much easier for Ms. Wheeler, I'll hand a chart of that
10 up to her.

11 MR. CAMPBELL: Your Honor, I'd just like to add in
12 the record that the two that are subject to additional
13 redaction pursuant to the negotiation are Blair 143 and Muñiz
14 1757.

15 MS. KAPLAN: We agree with that, Your Honor.

16 THE CLERK: Could you repeat those, Mr. Campbell?
17 I'm sorry.

18 MR. CAMPBELL: Yes, ma'am, certainly.

19 The two subject for the redaction are Plaintiffs'
20 Exhibit 143 as to Ms. Blair and Plaintiffs' Exhibit 1757 as to
21 Ms. Muñiz.

22 THE CLERK: Thank you.

23 MR. CAMPBELL: Thank you.

24 THE COURT: All right. Mr. Cantwell?

25 MR. CANTWELL: Yes.

C. Cantwell - Cross

1 THE COURT: You did have a right, if you wish, to
2 cross-examine yourself.

3 MR. CANTWELL: Would that preclude me from testifying
4 in my own case later?

THE COURT: No. Not to duplicate things.

6 MR. CANTWELL: Yeah, no, I would like to -- if I may,
7 I'd like to answer some of the things that I was questioned
8 about now and then present my case subsequently. Does that
9 work?

10 THE COURT: You may do so.

11 MR. CANTWELL: Okay.

12 THE COURT: Ladies and gentlemen of the jury,
13 Mr. Cantwell is representing himself, so he has to ask himself
14 questions and then answer the questions, and he's going to be
15 allowed to stand at the lectern there to proceed.

16 He's still a witness. This is cross-examination, his
17 cross-examination of himself, after he was called as a witness
18 for the plaintiffs, as an adverse witness.

CROSS-EXAMINATION

20 MR. CANTWELL: Pardon me, but is it necessary that I
21 literally ask myself questions, or may I --

22 THE COURT: You can preface what subject you're going
23 into.

24 MR. CANTWELL: Okay.

So one of the things that came up yesterday was an

C. Cantwell - Cross

1 episode of the Radical Agenda titled "Political Violence."
2 This aired shortly before the events at the heart of this
3 dispute, and given the clip that was played, one might get the
4 impression that this was an endorsement of political violence.
5 Given the -- subsequently, Mr. Spencer asked me about
6 libertarianism. Some of you will recall I had a bit of an
7 ideological exchange with Mr. Spencer about that subject.

8 I would like to play for you some of that episode of
9 the Radical Agenda. It was episode 318, and it was titled
10 "Political Violence." It aired, I think, in -- I think we
11 actually say on here. I think it was July 17th, 2017.

12 This is Plaintiffs' Exhibit 2713. I would seek to
13 admit the entire recording into evidence, but I'm going to skip
14 through it so that we're not playing the entire two hours of
15 audio, if that works.

16 THE COURT: All right.

17 MR. CANTWELL: Does that work?

18 THE COURT: Be admitted.

19 MR. CANTWELL: Okay.

20 (Defendant Cantwell Exhibit 2713 marked.)

21 (Defendant Cantwell Exhibit 2713 admitted.)

22 (Audio playing.)

23 MR. CANTWELL: I'll skip ahead a little bit through
24 the advertising.

25 (Audio playing.)

C. Cantwell - Cross

1 THE COURT: Mr. Cantwell, that seems to be repeating.

2 MR. CANTWELL: I'll fast-forward.

3 (Audio playing.)

4 THE COURT: Other people's opinions --

5 MR. CANTWELL: This is not -- what I'm attempting to
6 do is not convey Tucker Carlson's opinions. There is a
7 discussion on what I'm referring to when I'm discussing
8 political violence. And the message being conveyed here is
9 that politics is violence, which is a theme that has come up in
10 this trial repeatedly throughout, that it is a use of force.
11 And that was a discussion that was common in the alt-right
12 lexicon, which has been, in my view, sort of abused during the
13 course of this case.

14 I can move on. I'll fast-forward.

15 THE COURT: All right.

16 MR. CANTWELL: The title of this episode actually
17 came from something titled "Political Violence Is A Game The
18 Right Can't Win."

19 (Audio playing.)

20 THE COURT: Mr. Cantwell --

21 MR. CANTWELL: I'll stop. I'll stop. So the --

22 MS. KAPLAN: Your Honor, maybe it would be helpful to
23 approach and have a discussion.

24 MR. CANTWELL: I'm just going to close it. Okay?

25 The point has been made.

C. Cantwell - Cross

1 THE COURT: All right.

2 MR. CANTWELL: The point of the episode which they
3 portrayed to you as an endorsement of political violence is
4 precisely the opposite of that. And that is all I meant to
5 convey. And I'm sorry that, you know, I do a two hour-long
6 radio show and it's sometimes difficult to sum up a point in
7 the brevity preferable to the late stages of a civil trial.

8 And that discussion about the libertarian ideological
9 framework colors everything that I say, that it's -- you know,
10 you're justifying a use of force in the context of any
11 political action, whether it's to -- whether it's to raise
12 taxes, whether it's to make a traffic stop, that's what -- that
13 colors the discussion of force in the context of the Radical
14 Agenda all the time. If somebody is blocking traffic, as was
15 brought up in one of these stops, you know, it's perfectly
16 normal that the police would come and remove those people from
17 the highway.

18 There's a question, I think, in some people's minds
19 as to whether it's appropriate for a private citizen to do
20 that, but in the context of the Radical Agenda, which is
21 marketed as an entertainment product, I'm not so careful in how
22 I discuss it. And the associated social media properties are
23 extensions of the entertainment product, and they always have
24 been. It's not something I came up with after this lawsuit.
25 This was recorded, I think it was -- I think we said June. I

C. Cantwell - Cross

1 think we said July. It's actually June 2017, I believe. And
2 so this was two months before I even came to Charlottesville,
3 I'm talking about this stuff.

4 They brought up the camera thing. So let's do this.
5 I want to move into evidence and show -- publish to the jury
6 CCEX-125. This is Exhibit 125 on the exhibit list I gave you
7 originally. This is about the body camera.

8 (Defendant Cantwell Exhibit 125 marked.

9 MR. BLOCH: Judge, if I understand what's about to be
10 played -- this is a video that you have yourself edited, right?

11 MR. CANTWELL: Yes.

12 MR. BLOCH: It has been slowed down. It has got some
13 font on it. It's got a number of different --

14 MR. CANTWELL: I can play the originals if you
15 prefer. This is just an easy way to show it. Do you want me
16 to play the originals?

17 MR. BLOCH: We would prefer the originals.

18 MR. CANTWELL: Okay. Pardon me while I grab a piece
19 of paper from over in my area.

20 I wonder if plaintiffs' counsel would -- I don't know
21 if these are in already or not. But would plaintiffs' counsel
22 consider stipulating to the authenticity and admissibility of
23 132 and 135 in their entirety? It would be News to Share and
24 Getty.

25 MR. BLOCH: I'm sorry?

C. Cantwell - Cross

1 MR. CANTWELL: 132 and 135 on my exhibits list. I
2 believe that's the Getty video and the News to Share video.
3 That's what the clips are sourced from for 125.

4 MR. BLOCH: We would object to anything that there's
5 not proper foundation for. So we would not wholesale
6 stipulate.

7 THE COURT: What's 132? Which one do you want to
8 play? And let's take them up separately.

9 MR. CANTWELL: All right. 132, CCEX-132, this is a
10 video compilation of August 11th, the UVA incident, from an
11 outlet called News to Share. I can queue up the thing at hand.
12 It just becomes a little bit more clumsy. So just bear with
13 me.

14 THE COURT: Well, okay. What's the problem with it?

15 MR. CANTWELL: There's --

16 THE COURT: No, not -- I'm asking the defendant
17 [sic].

18 MR. BLOCH: Judge, my understanding of what he's
19 about to show is a video taken by a third party that
20 Mr. Cantwell, I believe, is not a percipient witness to.

21 THE COURT: Can you authenticate it? That's the
22 problem.

23 MR. CANTWELL: The portion that I mean to use, I can.
24 I'm in it.

25 THE COURT: Okay.

C. Cantwell - Cross

1 MR. CANTWELL: What I -- I was trying to make things
2 simpler by having them admit the entire video, and they're not
3 willing to do that.

4 THE COURT: Okay. Well, go to the part that you --

5 MR. CANTWELL: That's what I'm about to do, Judge.
6 Thanks.

7 (Pause.)

8 MR. CANTWELL: I apologize for my technical
9 difficulties. It should be going in just a moment.

10 On second thought, I may have to reboot my computer.
11 I'm very sorry.

12 MS. KAPLAN: Your Honor, if it would help move things
13 along, we're okay with Mr. Cantwell doing this on his direct
14 examination in his case just so that we don't -- to move things
15 efficiently. It's, of course, up to Your Honor and
16 Mr. Cantwell.

17 MR. CANTWELL: Efficiently would be playing 125. I
18 just need to reboot the computer.

19 THE COURT: If there's anything else, you can take
20 that up now.

21 MR. CANTWELL: I'm sorry.

22 THE COURT: I mean, if you can't get this going --

23 MR. CANTWELL: I just need to reboot the computer and
24 I should be able to get it up. There was something wrong with
25 the media player. When I closed it and reopened it, it didn't

C. Cantwell - Cross

1 reopen. I'm rebooting the computer. They've had this problem
2 a couple of times during the trial.

3 THE COURT: Is it rebooting now?

4 MR. CANTWELL: It is rebooting right now. It says
5 "restarting" on the screen as we speak. So once it restarts,
6 then I should be able to pull up the video. This is a
7 reasonably short thing, and then I can -- and then I can let
8 them move on. This is just to rebut something that came up
9 during the course of my direct examination.

10 THE COURT: All right.

11 (Pause.)

12 THE COURT: How much longer do you think this is
13 going to be?

14 MR. CANTWELL: It should already have happened. Why
15 it's making me log in for a third time, I don't know. Let me
16 give this one more shot, then I'll sit down. If it doesn't
17 work -- I don't know. This is not my computer. I'm doing the
18 best I can.

19 MS. KAPLAN: Your Honor, I know it's unconventional,
20 but if you want us to play the videos now, we could do that.

21 THE COURT: Excuse me?

22 MS. KAPLAN: I know it's unconventional, but if you
23 want us to play those two short videos, we're ready to do that
24 whenever.

25 MR. CANTWELL: I think it's going in now. Is

C. Cantwell - Cross

1 plaintiffs' counsel offering to play the videos, is this what I
2 understand?

3 THE COURT: No, she's offering to play her own.

4 MS. KAPLAN: Not your videos, our videos.

5 MR. CANTWELL: Oh, you're offering -- I understand.

6 MS. KAPLAN: Excuse me for addressing Mr. Cantwell,
7 Your Honor.

8 MR. CANTWELL: Do I understand the proposal to be
9 that plaintiffs' counsel will play their videos and I can work
10 on my technical issues, and then after their video, I'll return
11 to dealing with this problem?

12 THE COURT: Yes.

13 MR. CANTWELL: That's agreeable to me, Your Honor.

14 THE COURT: Okay. Thank you.

15 MS. KAPLAN: Thank you, Your Honor.

16 Your Honor, plaintiffs are going to play two short
17 videos to conclude our case. The first is Brad Griffin. These
18 are third-party witnesses.

19 MR. JONES: Your Honor, we don't have an agreement on
20 what portions of this video can be played. Which portions are
21 you -- I don't know which portions they're planning on playing.

22 MS. KAPLAN: I believe we provided you with notice of
23 this, Mr. Jones, as we have with all our designations, but
24 we're happy to hand it over to you again.

25 Again, I'm sorry, Your Honor. I apologize.

C. Cantwell - Cross

1 MR. JONES: They made timely deposition designations
2 and then over the weekend changed the deposition designations
3 and I objected to their changes. So I don't know if they're
4 including the new designations that are untimely or if they're
5 just using the old ones.

6 MS. KAPLAN: Every designation made over the weekend,
7 Your Honor, was shortening the designations we had already
8 made, in the interest --

9 MR. JONES: That's inaccurate. They added portions
10 of the video to their new deposition designations.

11 MS. KAPLAN: Let's -- here's a proposal, Your Honor.
12 We'll play the video in which we believe there's absolutely no
13 dispute. I apologize.

14 THE COURT: Play that which there's no dispute.

15 MS. KAPLAN: Which is third-party witness Ben Daley.
16 And while that's playing we'll try to work it out with
17 Mr. Jones. Would that make sense?

18 THE COURT: Go ahead.

19 (Video deposition of Ben Daley played.)

20 MS. KAPLAN: Your Honor, as I understand it with
21 respect to the last video, which is Brad Griffin, we've worked
22 out an agreement with Mr. Jones. We're just going to add --
23 Mr. Spalding needs to add a couple of seconds to the tape,
24 which he's doing right now. It should only take about
25 ten seconds, Your Honor, and then we can play that.

C. Cantwell - Cross

1 THE COURT: All right.

2 MS. KAPLAN: Mr. Spalding is ready and he'll play the
3 tape.

4 THE COURT: Go ahead.

5 (Video deposition of Brad Griffin played.)

6 MS. KAPLAN: Your Honor, that concludes our videos.

7 And I believe that, subject to the completion of the
8 cross-examination of Mr. Cantwell by himself --

9 THE COURT: With regard to that last deposition, was
10 that one that Mr. Cantwell is affected by and should not --

11 MS. KAPLAN: I believe the answer is yes.

12 Is that correct? Mike?

13 Yeah, I believe both of them -- okay, not the first
14 one, but yes to the second one.

15 THE COURT: All right.

16 Members of the jury, I'm going to read this
17 instruction I've read several times about depositions taken
18 when Mr. Cantwell did not have notice or attend.

19 I remind you that each party is entitled to have the
20 case decided solely on the evidence that applies to that party.
21 Some of the evidence in this case is limited under the rules of
22 evidence to some of the parties and cannot be considered
23 against others.

24 The plaintiff introduced the deposition of
25 Mr. Griffin, the last one you just heard. Such deposition

C. Cantwell - Cross

1 testimony may not be considered by you in connection with
2 Defendant Christopher Cantwell, but it may be used -- may be
3 considered by you in connection with the other defendants.

4 All right. Mr. Cantwell, did you find your --

5 MR. CANTWELL: I'm ready, sir.

6 THE COURT: All right. Do it.

7 CROSS-EXAMINATION

8 MR. CANTWELL: So I also made use of the additional
9 time that I was provided to actually cut these clips out of the
10 video. So I have separate files and exhibits, which I have yet
11 to provide to plaintiffs' counsel and the clerk, but I'll
12 gladly give to them as soon as I'm done with my presentation
13 here.

14 These will be CCEX-132A and CCEX-135A, which are
15 clips from the indicated exhibits wherein I will be able to
16 authenticate them through seeing myself in them.

17 THE COURT: All right.

18 (Defendant Cantwell Exhibits 132A and 135A marked.)

19 MR. CANTWELL: I'll start with 132.

20 THE CLERK: Mr. Cantwell, just to be clear, is the
21 clip in its entirety just what you want to show, or do I need
22 time stamps for this?

23 MR. CANTWELL: You do not need time stamps.

24 So 132A is the one I'm about to pull up. And you
25 don't have this file yet, but I'll give it to you. And the

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1 entire clip is the --

2 (Video playing.)

3 MR. CANTWELL: Okay. I'm going to do this at normal
4 speed. This is a 19-second clip and a lot happens in it. So
5 we have to go through this a couple of times for you to see
6 exactly what happens. I'm going to play it at normal speed
7 first.

8 THE CLERK: And they're admitted, Your Honor?

9 THE COURT: Yes.

10 (Defendant Cantwell Exhibits 132A and 135A admitted.)

11 MR. CANTWELL: I'm also going to -- since this seems
12 to be lighter on my screen than elsewhere, I'm just going to
13 increase the brightness using the VLC Media Player, if there's
14 no objection to that --

15 THE COURT: Go ahead.

16 MR. CANTWELL: -- just to see this.

17 (Pause.)

18 MR. CANTWELL: And with that done, in the first frame
19 of the video, I'm going to call everybody's attention right
20 here. I will make that circle a little bit bigger.

21 Specifically, this expandable baton in that woman's
22 hand. I'm about to try and disarm her.

23 (Video playing.)

24 This is me. You might recognize the logo on my
25 shirt. We've seen it a couple of times.

C. Cantwell - Cross

1 (Video playing.)

2 "Take that shit from her, take that shit from her,
3 get that fucking stick." You hear me say that. Okay?

4 Now that you have the audio in your head, I can put
5 it into slow motion and we can get a better grasp of what's
6 going on here.

7 The woman I'm attempting to disarm I've identified as
8 Lindsey Elizabeth Moers of Philadelphia. She's not a UVA
9 student --

10 MR. BLOCH: Objection to the foundation.

11 THE COURT: How do you know it's who you say it is?

12 MR. CANTWELL: This was discovered in the course of
13 my criminal defense investigation.

14 MR. BLOCH: Objection.

15 THE COURT: Well, who told you that's who it was?

16 MR. CANTWELL: My attorney primarily was a man by the
17 name --

18 THE COURT: Well, you didn't know that night who she
19 was.

20 MR. CANTWELL: No, not at the time. No. Okay.
21 Anyway --

22 THE COURT: Go ahead.

23 (Video playing.)

24 MR. CANTWELL: Call the jury's attention to the thin
25 wrist grabbing my collar right there.

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1 You hear a man say, "Cantwell, you've got a gun on
2 you." That man is mistaken. He knows me to carry a pistol. I
3 did not have a pistol at UVA.

4 I'll play that one more time before I show it to you
5 from a different angle.

6 (Video playing.)

7 You hear somebody scream "mace, mace, mace," and you
8 see me go like this. The reason I'm trying to get out of there
9 in such a hurry is because I've just been soaked with pepper
10 spray.

11 Now I'll go to 135A, which is a clip from 135,
12 CCEX-135A.

13 (Video playing.)

14 So this is the same scene, just from a different
15 angle, and pardon the water mark. This is from a company
16 called Getty Images.

17 (Video playing.)

18 I'm sure you all recognize me by now.

19 (Video playing.)

20 Here's the woman with the baton.

21 (Video playing.)

22 You can see her bringing it down to strike.

23 Over here is the man I pepper-sprayed in the video
24 that was played by plaintiffs' counsel earlier, and he's now
25 spraying pepper spray in that direction.

C. Cantwell - Cross

1 (Video playing.)

2 You may recall the man with the blue shirt with the
3 orange sleeves. Here he is fighting another man.

4 (Video playing.)

5 I may have to -- two things I want to catch in this
6 video that happened.

7 MS. KAPLAN: Your Honor, is this being played -- I'll
8 ask Mr. Cantwell.

9 Is this being played in slow motion? I can't really
10 tell.

11 MR. CANTWELL: Yes, it is being played in slow
12 motion.

13 MS. KAPLAN: Okay. Just so the record will reflect
14 that.

15 MR. CANTWELL: Yeah.

16 (Video playing.)

17 I'm going to rewind that a little bit and slow it
18 down one more notch. A lot happens here.

19 (Video playing.)

20 This is the man that I pepper-sprayed in the earlier
21 video.

22 (Video playing.)

23 That's him deploying pepper spray at me.

24 (Video playing.)

25 And this is a little bit blurry, but if you keep your

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1 eye right here, you'll see the woman's hand on my shirt,
2 stealing the body camera.

3 MR. BLOCH: Objection.

4 MR. CANTWELL: I'm sorry?

5 MR. BLOCH: Object to the characterization, Judge --
6 I'm sorry. Objection to the characterization of what she was
7 attempting to do.

8 THE COURT: Well, I mean, you can tell why you think
9 she was doing something.

10 MR. CANTWELL: So here you'll see where my body
11 camera used to be. Then you'll see a woman's hand there, and
12 then there won't be a body camera there anymore. I'll leave it
13 to you to figure out her intent.

14 (Video playing.)

15 So those are 132A and 135A. I won't do this over and
16 over again. If -- I hope that the jury sees fit that they can
17 be instructed on how to do slow motion, because there's
18 obviously a lot going on in that video.

19 I think there's just one other thing that I want to
20 address before I step down, and then I can -- what little, if
21 anything, I have left, I can deal with when I present my own
22 case.

23 You know what? No further questions.

24 THE COURT: Okay. Is that all?

25 MS. KAPLAN: Your Honor, I think Mr. Bloch has one

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1 question --

2 THE COURT: Okay.

3 MS. KAPLAN: -- to ask Mr. Cantwell.

4 THE COURT: Come around back. We're going to take a
5 break in just a second.

6 (Pause.)

7 MR. BLOCH: The clips you just made, I want to show
8 them now.

9 THE COURT: Oh. Well, we'll take a break. We'll
10 take a 20-minute recess.

11 (**Jury out, 10:32 a.m.**)

12 (Recess.)

13 THE COURT: All right. Mr. Cantwell, come on around.
14 And get the jury.

15 (**Jury in, 10:53 a.m.**)

16 THE COURT: All right. You may be seated and
17 proceed.

18 MR. BLOCH: Thank you, Judge.

19 REDIRECT EXAMINATION

20 BY MR. BLOCH:

21 Q If we could just pull up a screenshot from the video you
22 just showed. This is a screenshot from Exhibit 135A, the video
23 that you just showed; is that correct?

24 A Yes.

25 Q And you were here this morning when the deposition of

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1 Benjamin Daley was being played, right?

2 A Yes.

3 Q And you agree with me that this that I'm circling is you
4 in this video, right?

5 A Yes.

6 Q And this is Benjamin Daley, right?

7 A It's my first time noticing, but yes.

8 MR. BLOCH: Nothing further, Judge.

9 THE COURT: Is that it?

10 MS. KAPLAN: Your Honor, I have to read in some
11 exhibits from the videos. That's all for Mr. Cantwell, yes.

12 Ms. Wheeler, for the Griffin video, all we have is a
13 clip report, and that's Plaintiffs' Exhibit 3941.

14 For Mr. Daley, the clip report is 3911 and the
15 exhibits that we seek to introduce as a result of the video
16 played are the following: Plaintiffs' Exhibit 2655, 1949,
17 2906.

18 THE CLERK: Wait a second. I'm sorry. After 1949 it
19 was what?

20 MS. KAPLAN: 2906, 2659, 1965, 3808, 3530, 0693,
21 3344, 1959, 2675, 1955, and 2583.

22 We'd ask that they be admitted into evidence, Your
23 Honor.

24 THE COURT: All right.

25 (Plaintiff Exhibits 3941, 3911, 2655, 1949, 2906,

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1 2659, 1965, 3808, 3530, 0693, 3344, 1959, 2675, 1955, and 2583
2 admitted.)

3 THE COURT: Okay. You ready?

4 MS. KAPLAN: Subject to the facts deemed, we're
5 absolutely ready, Your Honor.

6 THE COURT: Members of the jury, I'm going to read
7 this instruction to you at this time pertaining to Defendants
8 Elliot Kline and Robert Azzmador Ray, Vanguard America,
9 National Socialist Movement, and Matthew Heimbach, who failed
10 to comply with discovery obligations, and as a result I will
11 issue appropriate sanctions against each of them.

12 But one of those sanctions specifically concerns
13 Defendants Elliot Kline and Robert Azzmador Ray. On account of
14 Defendant Elliot Kline's failure to comply with his discovery
15 obligations in this case, I have imposed as a sanction that the
16 following facts are to be deemed established as true against
17 Defendant Elliot Kline for purposes of this case:

18 One, Defendant Kline was one of the leaders of
19 Identity Evropa from April 2017 through at least August 2017.

20 Two, Defendant Kline entered into an agreement with
21 one or more co-conspirators to engage in racially motivated
22 violence in Charlottesville, Virginia, on August 11 and 12,
23 2017. Whether such conspirator or conspirators are or are not
24 a defendant or defendants is a question for the jury.

25 Three, Defendant Kline was motivated by animus

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1 against racial minorities, Jewish people and their supporters
2 when conspiring to engage in acts of intimidation and violence
3 on August 11 and 12, 2017 in Charlottesville, Virginia.

4 Four, it was reasonably foreseeable to Defendant
5 Kline and intended by him that co-conspirators would commit
6 acts of racially motivated violence and intimidation at the
7 events in Charlottesville on August 11 and 12, 2017. Whether
8 such conspirator or conspirators are or are not a defendant or
9 defendants is a question for the jury.

10 Five, after the Unite the Right event in
11 Charlottesville, Virginia on August 11 and 12, 2017, Defendant
12 Kline ratified the racially motivated violence at the event.

13 On account of Defendant Robert Azzmador Ray's failure
14 to comply with his discovery obligations in this case, I will
15 impose as a sanction that the following facts be deemed
16 established as true against Defendant Robert Ray for purposes
17 of this case.

18 One, Defendant Ray was a writer for *The Daily Stormer*
19 from at least July 2016 through at least March 2020.

20 Two, Defendant Ray entered into an agreement with one
21 or more co-conspirators to commit racially motivated violence
22 in Charlottesville, Virginia on August 11 and 12, 2017.
23 Whether such conspirator or conspirators are or are not a
24 defendant or defendants is a question for the jury.

25 Three, Defendant Ray was motivated by animus against

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1 racial minorities, Jewish people and their supporters when
2 conspiring to engage in acts of intimidation and violence on
3 August 11 and 12, 2017 in Charlottesville, Virginia.

4 Four, it was reasonably foreseeable to Defendant Ray
5 and intended by him that the conspirators would commit acts of
6 racially motivated violence and intimidation at the events in
7 Charlottesville on August 11 and 12, 2017. Whether such
8 co-conspirator or co-conspirators are or are not a defendant or
9 defendants is a question for the jury.

10 Five, after the Unite the Right rally in
11 Charlottesville on August 11 and 12, 2017, Defendant Ray
12 ratified the racially motivated violence that occurred at Unite
13 the Right.

14 The Court will instruct you at a later time with
15 respect to the particular nature of other sanctions imposed
16 against Defendants Elliot Kline, Robert Azzmador Ray, Vanguard
17 America, National Socialist Movement, and Matthew Heimbach.

18 You are cautioned, however, that each party is
19 entitled to have the case decided solely on the evidence that
20 applies to that party. The facts deemed established which I
21 have just listed are admitted only as to Defendants Elliot
22 Kline and Robert Azzmador Ray respectively. Thus, taking those
23 facts as true for this case against Elliot Kline and Robert Ray
24 does not relieve plaintiffs of their burden to prove by a
25 preponderance of the evidence that the conduct committed by the

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1 other defendants in the case.

2 All right. That's your case?

3 MS. KAPLAN: Your Honor, subject to the UVA policy
4 issue I mentioned this morning, plaintiffs rest their case.

5 THE COURT: Are you ready to proceed?

6 MR. SPENCER: Yes.

7 MR. CANTWELL: I'd like to make a Rule 50 motion.

8 THE COURT: All right. Members of the jury, this is
9 probably going to take about ten minutes. I'm going to let you
10 go back to the jury room. You have heard the plaintiffs have
11 rested their case and now it shifts to the defendants, but
12 there will be some motions we have to take up before we get to
13 the defendants' case. So allow the jury to go back to the jury
14 room until we're ready.

15 These motions have to be taken up out of the presence
16 of the jury.

17 **(Jury out, 11:03 a.m.)**

18 THE COURT: All right.

19 MR. CANTWELL: Judge, I move to dismiss the case
20 against me, the plaintiffs' claims against me pursuant to Rule
21 50. I think it's plain to see that they have not -- as best I
22 can tell, they haven't even alleged that I've been involved in
23 a conspiracy. There's no allegation that I had an agreement
24 with anybody to do anything unlawful. There has been no
25 evidence that I attempted to harm a racial minority or that

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1 that was my intent. It is simply that I have unfashionable
2 political views and I showed up in a place where violence
3 ensued despite my best efforts. And so I think that that is a
4 plain situation as a matter of law.

5 I also, to the extent applicable, would seek to
6 incorporate by reference the arguments that I made in some of
7 my motions in limine, which were dismissed as -- or denied as
8 untimely dispositive motions, specifically that animus against
9 Antifa is not an invidiously discriminatory animus in the
10 definition of 1985(3), and that the plaintiffs' claims arose ex
11 *turpi causa* and are barred *in pari delicto* as a result of their
12 own immoral or unlawful actions.

13 We have seen video after video where the plaintiffs
14 get up on the stand and they tell us that they were not around
15 anybody who had any weapons and that this was a joyful,
16 celebratory crowd, and then we go one by one and circle the
17 weapons, though they deny seeing them right in front of their
18 faces.

19 So for those reasons, Judge, I think as a matter of
20 law, the plaintiffs' case fails and should be dismissed without
21 troubling these defendants or the jury any further. Thank you.

22 THE COURT: All right. Did anyone else have a
23 motion?

24 MR. KOLENICH: Your Honor, we are going to file Rule
25 50(a) motions, but we're going to do it in writing prior to the

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1 jury receiving the case.

2 THE COURT: Prior to what?

3 MR. KOLENICH: Prior to the jury being charged and
4 retiring.

5 THE COURT: All right.

6 MR. SPENCER: I would also like to move for a Rule 50
7 motion. This is a complicated case in the sense that it's an
8 allegation of a conspiracy, but it's very clear that each of
9 the defendants has a unique story to tell about how he was
10 invited to join in this rally, a different story to tell in
11 terms of his own actions before, during, and immediately after
12 the event.

13 Much as with Mr. Cantwell, there hasn't really been
14 an attempt to demonstrate that I conspired with anyone to
15 commit violence. There are -- there is certainly video that's
16 quite disturbing about people who were -- clearly had bad
17 motives and so on. There was not even an attempt made to
18 demonstrate that I had any contact with these people or
19 knowledge of them.

20 Professor Simi has testified on the stand that he has
21 spent a thousand hours going over the Discord server where the
22 rally was logistically planned and organized. He has testified
23 that I was not -- I was not a participant at all in that
24 server. I have no connection with James Fields outside of him
25 tweeting at me.

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1 At the end of the day, the plaintiffs' case is based
2 on my bold speech saying that we're engaging in a situational
3 war and so on. That is obviously protected by the First
4 Amendment. They have not attempted to demonstrate that I
5 conspired with anyone or that I sought out to harm any of the
6 plaintiffs.

7 Thank you.

8 THE COURT: All right. Since you raised it, I'll
9 respond to it. But at this point the Court looks at -- is
10 charged by the law to look at the evidence only in the light
11 most favorable to the plaintiffs. So disregarding any evidence
12 that you might put on contrary to what they say. And
13 Mr. Cantwell, just how this looks from the standpoint of the
14 law, in the days leading up to Unite the Right, you exchanged
15 text messages with Defendant Spencer in which you stated, "I'm
16 willing to risk a lot for our cause, including violence and
17 incarceration. Many in my audience would follow me there, but
18 I want to coordinate and make sure it's worth it to our cause."

19 Mr. Spencer responded, "It's worth it, at least for
20 me." That is, I believe, PX-3317, referenced in trial
21 testimony yesterday at transcript 239:24 through 240. To be
22 sure, other explanations of that exchange have been offered by
23 Mr. Cantwell and Mr. Spencer; however, that statement, along
24 with the other evidence in the case could be taken at face
25 value that Mr. Cantwell and Mr. Spencer were willing to risk

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1 violence and incarceration for their cause, but wanted to
2 coordinate ahead of time to do so.

3 The Court also notes evidence that Mr. Kessler texted
4 Mr. Cantwell on July 8, 2017: "Be ready for Charlottesville.
5 It's going to be a BLM/Antifa S show," PX-3317. Afterward
6 Mr. Cantwell promoted Unite the Right on his podcast and
7 website. Transcript 225. Mr. Cantwell has also admitted that
8 he seriously advocates for a white ethnosestate and he advocates
9 violence on his podcast. Indeed, in a podcast less than a week
10 before Unite the Right, Mr. Cantwell admitted he used coded
11 language for the catch phrase, quote, "gas the kikes, race war
12 now." That's at transcript 236 through 37. Mr. Kessler was a
13 guest on that program.

14 And on that show Mr. Cantwell again said explicitly,
15 let's have a race war. He thought there was a good reason to
16 genocide a group of people, referring to Jews. He made a
17 string of other violent remarks against minorities or others,
18 stating he thought chemical or biological weapons can do a
19 great deal of good for mankind, and saying that immigration
20 makes him want to bash peoples' skulls open. When Mr. Cantwell
21 left for Charlottesville, he brought with him a bunch of
22 canisters of pepper spray and metal rods that can be used as
23 weapons. And I know he said that he was maybe going to sell
24 them, but he also said it was for others to use.

25 In the day before Unite the Right, Mr. Cantwell gave

C. Cantwell - Redirect

1 an interview in which he said, "I've got to organize an unknown
2 number of armed extremists I've never met through a hostile
3 environment with death threats and legal intimidation."

4 Transcript 247.

5 On August 11, 2017, Mr. Cantwell marched in a torch
6 march, then pepper-sprayed and beat up someone at the Thomas
7 Jefferson statue.

8 Now, you've got an explanation for all these things,
9 but there's no -- there's no self-defense after you're not in
10 danger. Because somebody hits you, that doesn't give you the
11 right to beat them to death or beat them within an inch of
12 their life. There's no self-defense whatsoever to anything
13 Mr. Fields did. There's just absolutely nothing to justify
14 that.

15 And the fact that you might -- you know, this jury
16 could find -- and this is a theory, I think, of the plaintiffs'
17 case -- that this was a plan to come to Charlottesville with
18 the idea of provoking a fight and apply overwhelming response
19 to it based on racial animus. And I think there's ample -- you
20 know, construing the evidence in the light most favorable to
21 the plaintiffs, it's a jury issue as to whether you all
22 conspired to do so.

23 And if you listen to that instruction I gave on
24 conspiracy, you don't have to be at the meeting and plan
25 anything. If you know what the other people are planning and

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1 you go along -- you join in with it, you don't have to do very
2 much. Just get in there and be there, go along with it,
3 support it; you're part of the conspiracy.

4 I mean, you have a misunderstanding, I'm afraid, of
5 what the law of conspiracy is. It's a long instruction, but
6 I've read it several times.

7 So I'm denying all the Rule 50 motions at this time.

8 MR. CANTWELL: Very good.

9 MR. JONES: Your Honor, I just want to bring up a
10 scheduling issue. I have a couple of witnesses that I will
11 call. I did not anticipate that we would get through the
12 plaintiffs' case this quickly, and there's a good chance that
13 the defense -- the other defendants will get through their case
14 fairly quickly today so that we'll have some time.

15 My witnesses won't be here until 9 o'clock tomorrow
16 morning. They're coming from out of town -- my one witness is
17 coming from out of town. It will take about half an hour for
18 my case tomorrow morning.

19 THE COURT: Well, I think if they're coming at 9
20 o'clock in the morning, it's going to be safe to say that we
21 will not be instructing the jury by then.

22 MR. JONES: Well, I actually don't know that we'll
23 have enough defense evidence to make it even until lunch today.
24 I don't know what the other defense counsel and defendants are
25 doing, but --

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1 THE COURT: Well, if we don't, I'll be the happiest
2 person in the world.

3 MR. JONES: I was just going to suggest that perhaps
4 we could work on jury instructions.

5 THE COURT: I'll feel so good, I won't mind. All
6 right.

7 MR. JONES: Anyway, we can perhaps work on jury
8 instructions or something else in the afternoon.

9 THE COURT: Okay. We'll do that. Thank you.

10 All right. Anything else before we call the jury
11 back?

12 MS. KAPLAN: Not from the plaintiffs, Your Honor.

13 THE COURT: You may call the jury.

14 THE CLERK: Mr. ReBrook has something.

15 MR. REBROOK: I'll also make a Rule 50 motion, but
16 we'll be doing it in writing.

17 THE COURT: You may.

18 MR. SMITH: Your Honor, Josh Smith. Same here.

19 THE COURT: Okay, Mr. Smith.

20 MR. SMITH: Thank you.

21 THE COURT: Thank you.

22 Call the jury.

23 MS. KAPLAN: As the jury comes in, Your Honor -- it
24 would really help if Mr. Spencer heard this -- if before he
25 starts a line of questioning, he could say the subject, so we

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1 can think about any objections we may have.

2 THE COURT: All right. The purpose of asking the
3 question, the purpose is so that the other party knows what
4 you're going -- seeking, so they'll know whether to object to
5 it or not.

6 MR. SPENCER: I don't think there are going to be any
7 surprises in what I'm presenting.

8 (**Jury in, 11:16 a.m.**)

9 THE COURT: All right. You may be seated.

10 Are you first, Mr. Spencer? All right.

11 RICHARD SPENCER, CALLED BY DEFENDANT SPENCER,

12 PREVIOUSLY SWORN

13 DIRECT EXAMINATION

14 MR. SPENCER: My name is Richard Spencer and I'm
15 acting on my own behalf, so I'm in a somewhat unusual position
16 of presenting evidence and also testifying to it. It's a bit
17 like I'm asking myself questions in a cross-examination.

18 MS. KAPLAN: I apologize, Your Honor. Doesn't
19 Mr. Spencer need to be sworn in?

20 THE COURT: Need what?

21 MS. KAPLAN: I think Mr. Spencer needs to be sworn
22 in. Doesn't Mr. Spencer need to be sworn in for his testimony?

23 THE CLERK: She's asking if he needs to be sworn in,
24 but he was previously sworn.

25 MS. KAPLAN: Okay. As long as that's an

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1 understanding.

2 MR. SPENCER: So I've been previously sworn in, so
3 this will be like testimony.

4 I am -- with your indulgence, I'm going to try to
5 change the way this is appearing on my screen. It is very
6 blurry and I can't quite read it. Let me -- what I might do is
7 just go in and out, if that's okay, because I can read
8 everything just fine here.

9 Okay. I'm going to begin with a piece of evidence
10 that was already introduced. This is Defense Exhibit 1001.
11 And this is my correspondence with Mr. Kessler.

12 Already admitted. Could we publish this to the jury,
13 please?

14 THE COURT: Yes.

15 MR. SPENCER: Okay. I'm going to go to June 5th
16 through the 15th. So as you see here, this is the text message
17 just above. This is shortly after C'ville 1.0. Mr. Kessler
18 has decided that he wants to do his own rally and we had a
19 short conversation about that. On June 5th he says, "We are
20 going to start the promotional material for Charlottesville
21 2.0, Unite the Right, Battle of Charlottesville. Is your name
22 going to be one of the headliners?" And I say, "Firm date?"
23 He says, "August 12 it is brother." I ask if Enoch, Damigo --
24 I'm kind of getting a sense, if this is going to be like the
25 other events that I've participated in, much like give

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1 speeches, make a big show, get out. It was just another gig
2 for me.

3 "If they deny the permit, Bristow and I will keep
4 them in court to the point" -- this is Mr. Kessler just saying
5 stuff.

6 He did send me a: "We're raising an army, my liege,
7 for free speech, but the cracking of skulls if it comes to it."
8 A bit concerning. I did not respond to that message. The
9 flowery language made it quite weird to me.

10 Now I want to show you two things that go along.

11 So this is part of the same exhibit. It's actually
12 embedded in the text messages. I simply wanted to show this to
13 you right here. This is actually the first Unite the Right
14 poster that was presented. It's very similar to the one that's
15 been shown to you a number of times. My name is not on it.
16 Okay. And that is what is in that image 4099 right there, JPG.

17 Mr. Kessler responds, "We're ready to add your name
18 when you give us the go-ahead." My response is, "Give me a few
19 hours. Lots of people have told me that my name on the poster
20 would make the event dangerous. Let me ask some people first."

21 So my concern here is that this seems to be kind of a
22 public event.

23 Charlottesville 1.0 was what could be called a --
24 sometimes called a flash mob or a flash protest. Basically,
25 it's not announced publicly. You flash in, as it were, do a

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1 demonstration of some sort, take some photos, post it on social
2 media, and then flash out. This is a way of avoiding
3 counter-protesting.

4 I did have a sense that Jason wanted something
5 different, and my concern here is at that point I was at the
6 height of my fame, or infamy, depending on your perspective. I
7 was well-known. At a rally I had been at in April that was
8 actually about Donald Trump's missile strike on Syria -- I
9 think you might remember that -- Antifa entered the rally
10 chanting my name --

11 MR. BLOCH: Objection to foundation, "Antifa."

12 MR. SPENCER: I was there. I was there, Your Honor.

13 THE COURT: All right. Go ahead.

14 MR. SPENCER: Antifa entered chanting my name and had
15 a bit of a "we're going to get you"-type vibe.

16 So my sense was that -- at this point with
17 Mr. Kessler, my perception was that he wanted to have this
18 Unite the Right, a big tent, all are welcome. I think what he
19 was attempting at this point was to bring in --

20 MR. BLOCH: Objection to what he thinks Mr. Kessler
21 was intending --

22 MR. SPENCER: I'm talking about my perception.

23 THE COURT: Just a minute.

24 What Mr. Kessler -- he thinks Mr. Kessler is telling
25 him affects him. So he's talking about his state of mind. And

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1 it's permissible, not to prove that Mr. Kessler meant what
2 Mr. Spencer thought he meant, but Mr. Spencer reacts based on
3 what he thinks Mr. Kessler means. And that's why the evidence
4 comes in.

5 MR. BLOCH: That's fine, Your Honor. Thank you.

6 THE COURT: Go ahead.

7 MR. SPENCER: Mr. Kessler can speak for himself. My
8 perception at the very beginning of this stage was that he
9 wanted to have this big tent, bring in lots of people,
10 conservatives, the kind of people who were known as the
11 alt-lite at the time. That is people who, well, were -- didn't
12 take firm positions, really, on anything and had achieved a
13 kind of e-celebrity.

14 What I was suggesting here is that if I were there,
15 that this could -- this would definitely attract Antifa.
16 Antifa have come to my home, et cetera. This would make the
17 rally something -- something different. And that concerned me.

18 Mr. Kessler responded very firmly, "We'll literally
19 fight for your right to speak at this event and I'm not the
20 only one." And I said, "I know that. It's a matter of
21 discretion." I asked to give an hour.

22 And then he suggested -- he's clearly trying to coax
23 me into doing this -- "We have the full cooperation of the
24 police if you need it."

25 And I said, "I know. Be patient, Jason."

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1 Well, I took a little more than an hour and then I
2 said, "I'm 100 percent in. Please put my name on the fliers
3 for the event. Thank you for your steadfastness. I really
4 respect and appreciate it."

5 Later on -- and this is, again, embedded in the
6 message chain -- we see a new poster which you have seen
7 before. And this is a refurbished one. My name is on the top
8 of it.

9 I want to go to July 23rd. I am directing him --
10 Eli, to my understanding -- this is Eli Mosley, or Eli Kline,
11 who has defaulted in this case. It was my understanding -- he
12 was a very energetic activist who -- he was part of Identity
13 Evropa. That's how I met him. But he was talking to everyone
14 endlessly and involving himself this way and that.

15 The name right there is interesting. It says "Greg
16 Ritter." He'll show up in some photographs in a little bit.
17 His actual name is Greg Conte; he simply went by "Greg Ritter"
18 on Twitter as kind of a pseudonym. I said, "They make all the
19 decisions for me." Eli was involved deeply in the promotion
20 and organization, logistical planning of Charlottesville. I
21 was out of the loop. Greg Ritter, or Greg Conte, is a friend.
22 He's someone who was working for me. He was involved in my
23 security. Again, you'll see him later on. Apparently they
24 were having a falling-out, according to that message. I have
25 no idea whether that's true or not.

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1 Here -- this is August 7th. Mr. Kessler is saying,
2 "We're going to need to put up a legal challenge." There was
3 an issue with the permit in the city. And I said that I'll
4 call Sam.

5 Sam Dickson is a lawyer in Georgia who I knew, and I
6 was simply suggesting that he talk to Sam Dickson -- that is, a
7 lawyer --

8 MR. BLOCH: Objection, Judge.

9 THE COURT: What is the objection? Does it really
10 hurt your case?

11 MR. BLOCH: I'll withdraw, Judge.

12 THE COURT: Okay. Go ahead.

13 MR. SPENCER: Okay.

14 We now go on later that day into August 8th.

15 Mr. Kessler sends me a message.

16 So just to give you a kind of overview, these are the
17 kinds of things that Kessler would talk to me about regarding
18 the rally, big-picture stuff, or, in this case, legal matters
19 that have nothing to do with the logistics. "There's a First
20 Amendment attorney in Richmond that may be willing to take the
21 case, but he's gonna require \$8,000. If we all push this on
22 social media we could raise it at RootBocks," some kind of
23 fundraising platform. I said, "No doubt. Hold on a moment."
24 Then later he responds, a little bit later that day, hour and a
25 half later, "Now the ACLU is saying they're going to represent

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1 us in conjunction with Kyle." That is Kyle Bristow, who is a
2 lawyer in Michigan. I said, "Amazing. Let's work with them."
3 I think that was an amazing idea. "Still awaiting approval
4 from their board, but I was contacted by one of their attorneys
5 and it seems like a very high probability they will take our
6 case" -- "take the case." Excuse me.

7 This -- now we are getting to the day of the rally,
8 and I am going to -- this will be the last thing. I'm going to
9 move on to talking about my time on August 11th and then
10 August 12th.

11 "There's a leadership meeting tonight at 7 p.m. in
12 McIntire Park." I didn't respond and I did not attend.

13 Later on -- this is, I think, right before the
14 torchlight rally was getting started, unless I'm mistaken.
15 There were a number of people gathering in Nameless Field, and
16 I suggested to Jason, "Come out front. Let's get this
17 started."

18 Later on, there are additional -- you could examine
19 this entire thing. Later on, there are additional discussions
20 of -- after the event I gave a press conference. Jason gave
21 his own press conference in Charlottesville and got chased
22 around. It is basically a: I'm going to just do my own thing
23 now, Jason. You can read that, if you would like.

24 I'm going to unplug this real quick and plug back in
25 occasionally. The only reason is that my screen manifests on

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1 this screen in this very blurry fashion.

2 Okay. So let's go to August 11th. This is a fair
3 and accurate depiction of a tweet I sent.

4 And I would like -- I would submit it as Defendants'
5 Exhibit 1032 and publish it to the jury.

6 THE COURT: Be admitted.

7 THE CLERK: 1032?

8 MR. SPENCER: Yes.

9 (Defendant Spencer Exhibit 1032 marked.)

10 (Defendant Spencer Exhibit 1032 admitted.)

11 MR. SPENCER: This is a photo of myself in front of
12 Nameless Field. It was tweeted at 10:42 p.m. Eastern time. I
13 think that suggests that I took the photo and then tweeted a
14 little bit later. But this, I think, captures a great deal of
15 my experience throughout August 11th.

16 I saw some pushing and shoving here and there. As
17 you will notice in all of these videos that are showing
18 violence, I am not in any of these videos, at least to my
19 knowledge. And this, I think, is a good expression of my state
20 of mind at the time.

21 I'd now like to submit for evidence a text exchange
22 with a *Washington Post* reporter named Joe Heim. And this is
23 1031. Let me call it up and I'll recognize it and then I'll
24 submit it. I'm somehow reading the numbers on this screen.

25 So this is a fair and accurate representation of my

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1 text exchange with a *Washington Post* journalist. And I submit
2 it into evidence as 1031 and would like to publish it to the
3 jury.

4 THE COURT: You may. Be admitted.

5 (Defendant Spencer Exhibit 1031 marked.)

6 (Defendant Spencer Exhibit 1031 admitted.)

7 MR. SPENCER: At the time, Joe Heim was a reporter at
8 the *Washington Post*. He got my number somehow and --
9 journalists tend to be able to do that -- and he sent me this
10 message, and we spoke a little bit about the Charlottesville
11 rally.

12 Going down, this is on August 11th at 8 p.m. So this
13 is before the torchlight rally began. And Joe Heim sent me a
14 message. "It's Joe Heim from the Post. I'm in town. Is there
15 happening tonight that you know of?"

16 And I said, "Yeah..."

17 I said, "I'll keep you up to date. I'd be near
18 campus tonight, if I were you."

19 So I'm basically giving him a tip.

20 "Good to know. Thanks. Time frame?"

21 I said, "After 9 p.m."

22 He said, "The Lawn?"

23 I said, "Nameless Field." That's, my knowledge at
24 the time, where everyone was congregating. Then I said, "We
25 are starting there and marching to the statues at UVA.

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1 Hundreds and torches."

2 Then we move on a little bit later in the evening.

3 Now, I think it is -- why I'm bringing this into
4 evidence is I invited a reporter from the *Washington Post* to
5 the event. The notion that I was expecting some kind of awful
6 activity or malign conspiracy for whatever that I was involved
7 in, I don't think, holds much water. I wanted to promote
8 myself, and I'm inviting what could be fairly said to be a
9 hostile journalist. I am not in the slightest bit implying
10 that Joe Heim agrees with me on anything. He probably
11 disagrees with everything. I wanted him to be there.

12 Joe says this: "Well, I've already been called a
13 kike and a faggot, so this is going well."

14 Now, that's sarcasm, obviously, but I think it also
15 does get to a bit of the vibe of the alt-right in 2017. It was
16 all about being juvenile, stupid, and edgy.

17 I said, "Fun and games." And I said, "Did I see
18 you?" I said, "I don't think so." And I said, "Everyone is
19 safe, right?" And he said, "Yup." And I gave him a thumbs up.
20 I was concerned about his safety.

21 I'm going to return to this a little bit later, but I
22 would like now to move to August 12th and show you a little bit
23 of my experience during that day.

24 This is a fair and accurate depiction of a tweet I
25 sent at 9:21 a.m. on August 12th. And I would like to enter it

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1 into evidence as Exhibit 1033 and publish it to the jury.

2 THE COURT: You may. Be admitted.

3 (Defendant Spencer Exhibit 1033 marked.)

4 (Defendant Spencer Exhibit 1033 admitted.)

5 MR. SPENCER: I think this is an accurate depiction
6 of my state of mind at the time. I published this on Twitter.
7 I was happy, confident, ready to go. I said, "Let's do this.
8 #charlottesville."

9 Things would change.

10 I am now going to play some audio for you. This
11 audio was taken from -- I recorded this audio myself. It was
12 taken from a Periscope video. Now, Periscope is no longer
13 offered by Twitter. I was able to download it. So what has
14 happened is I've lost the video, but I still have the audio. I
15 wish I had the video.

16 Do you have the video? It's a ten-minute video.

17 Okay.

18 I would play the video for you. It simply amplifies
19 the situation. But actually, the audio is very interesting.
20 And you have to listen close. I might stop here and there to
21 point something out. But I want you to listen closely to it.

22 MS. KAPLAN: Your Honor, before Mr. Spencer does
23 this, I was unclear from the testimony. Can we confirm it's
24 Mr. Spencer's voice on the audio?

25 MR. SPENCER: More than my voice, but I will point

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1 out my voice. Yeah. I'll stop it just to make everything
2 clear.

3 This is 1016. This is so hard to see. I'm just
4 going to unplug real quick and plug back in. Here it is.

5 So I put this photo there. This is a photo that was
6 actually submitted by the plaintiffs, so I don't think they
7 would object. It actually is -- that photo was taken around
8 this time.

9 THE CLERK: Just so we're clear, this is admitted,
10 Mr. Spencer?

11 MR. SPENCER: Oh, sorry, it's not admitted. So this
12 is Defendants' Exhibit 1016. This is a fair and accurate
13 depiction of audio recorded at around 12 noon on Saturday,
14 August 12th, and I would like to submit it into evidence and
15 publish to it the jury.

16 THE COURT: Be admitted and you may publish.

17 (Defendant Spencer Exhibit 1016 marked.)

18 (Defendant Spencer Exhibit 1016 admitted.)

19 MR. SPENCER: Let me check here to make sure. I
20 think this is going to work in terms of audio, but if not,
21 we'll have to work that out.

22 (Audio playing.)

23 Okay. That is my voice, as you might perceive. I am
24 speaking to the assembling police from the state of Virginia
25 who were -- as you can see in this photo, militarized. And as

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1 I said, I said, "Don't do it. You don't want to do this."

2 (Audio playing.)

3 Now, around this time, this is after the state of
4 emergency has been declared. This was of course before any
5 speeches were given at the Unite the Right rally. And I would
6 say at this time most everyone had already left Emancipation
7 Park and had gone into Market Street.

8 (Audio playing.)

9 I'm talking to the police at this moment.

10 (Audio playing.)

11 I'll just stop right there. I cannot recognize who
12 is saying that. It's someone who is nearby, he's saying,
13 "You're pushing us out into Antifa."

14 (Audio playing.)

15 So at the time when I was saying "we're not going
16 anywhere," I was planning on engaging in a kind of passive
17 resistance, you could say. You're going to have to push us off
18 the field, basically. You'll hear more about that as the audio
19 goes on.

20 (Audio playing.)

21 I told other people nearby, I said, if you're not
22 willing to be arrested, just go, because this is getting really
23 bad. The police were out in force. They were marching us off
24 the field.

25 (Audio playing.)

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1 I'm talking to the police when I say, "I don't hate
2 you," just to make that clear.

3 (Audio playing.)

4 At that time my perception was that the ACLU had our
5 backs in a legal case.

6 (Audio playing.)

7 I could show this to you, I don't think I need to. I
8 was sprayed with mace as I was entering the park. It wasn't
9 that bad. Someone jumped out of the crowd and sprayed in the
10 air. Not nice, nothing that terrible, but it is an assault.
11 So that happened before I entered the park. So that was around
12 11 a.m. or so. Again, we're here just after noon.

13 (Audio playing.)

14 That is passive resistance.

15 (Audio playing.)

16 Okay. Now, you hear kicking. They were kicking us.
17 They had shields. They were expelling us from the yard and
18 they were kicking us in the shins under the shield. You can
19 actually hear that and you can hear me go (indicating sound).
20 So that's what's happening right now.

21 (Audio playing.)

22 I'm again speaking to the police, "We're not going to
23 resist you. Please calm down."

24 (Audio playing.)

25 Just to make clear, I'm saying, "I'm not going to

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1 hurt you, man," to the police. As the old saying goes, when
2 you fight the law, the law usually wins. We are being kicked
3 and brutally expelled from Emancipation Park. They won.

4 (Audio playing.)

5 At this point I had been maced by the police. It was
6 bear spray in the face. That got my attention. I was
7 discombobulated. You actually heard Greg Conte -- I'm all but
8 certain that's Greg Conte's voice, and it's in the background,
9 you just heard it, "We've got to protect Richard." So now
10 we're going to make our movement out of the park.

11 (Audio playing.)

12 Okay. That's the first time I said "We need to go."
13 I had been maced in the face. There was talk of "get fresh
14 water." I think soap would come a little bit later. That's
15 when I said we need to get out of this park.

16 So again, I engaged in passive resistance with the
17 police. That is the most violence I was involved in that
18 entire weekend. And we are making a run for it effectively
19 because at this point chaos was beginning to descend.

20 (Audio playing.)

21 Greg Conte said "This is not going to work out for
22 us."

23 (Audio playing.)

24 That's it. That last voice was Greg Conte's again,
25 "Richard, let's go, Richard, let's go." There are also people,

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1 I don't think Greg said that, but someone else around said
2 "we're surrounded." That's not a reference to the police.
3 That's being surrounded by chaos, I'm sure counter-protesters,
4 but just chaos, all on Market Street. That's where we're being
5 pushed. You know the layout of the park.

6 I would like to now publish some photos that --
7 they're all going to be 115A through E. They're actually all
8 taken from the same Instagram account. I will just open them
9 all and then I'll show them to the jury.

10 THE CLERK: Move for their admission, Mr. Spencer?

11 MR. SPENCER: Yes. So these are fair and accurate
12 depictions, and I would move for their admission as Defendants'
13 Exhibit 1015A through E and publish them to the jury.

14 MS. KAPLAN: While we don't think they were
15 previously produced, Your Honor, we don't have any objection.

16 THE COURT: Be admitted and you may publish.

17 (Defendant Spencer Exhibits 1015A through 1015E
18 marked.)

19 (Defendant Spencer Exhibits 1015A through 1015E
20 admitted.)

21 MR. SPENCER: This is immediately upon leaving the
22 park. The shirt I was wearing is covered in a combination of
23 sweat and mace. And I have clearly been maced again by the
24 police.

25 This is someone, I don't know who, but he's pouring a

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1 water bottle after I had been maced.

2 That's a similar shot. There's me getting doused
3 with water.

4 This is Greg Conte. When I talked about planning for
5 Charlottesville, it was basically Greg and me getting in and
6 out safely. This is Greg. I was -- he was not maced. I was
7 completely discombobulated at the time. And this is us finally
8 getting past Market Street and out.

9 Okay. I'm now going to play another Periscope video.
10 And because this one is shorter, the video, not just the audio,
11 was saved when I got it from Twitter. So this -- you'll see
12 audio in this as well.

13 And -- all right. This is a fair and accurate
14 depiction of a video that I took, and I would like to submit it
15 as evidence as Defendants' Exhibit 1017 and publish it to the
16 jury.

17 THE COURT: You may publish.

18 (Defendant Spencer Exhibit 1017 marked.)

19 (Defendant Spencer Exhibit 1017 admitted.)

20 (Video playing.)

21 MR. SPENCER: I think there's more to that one. I
22 might find -- with your indulgence, that one got cut off a
23 little bit. It might have been when I rendered it. There's
24 just a little bit more.

25 Okay. I'm just going to play this in a different

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1 file format, but it is the same thing. And I will fast forward
2 ahead so I don't duplicate anything. So this is the same
3 exhibit. And I'll clean up anything on the back end. I'll get
4 to a part where we were.

5 I'm no longer hearing it. Oh, right, because I
6 haven't plugged it in.

7 (Video playing.)

8 Well, the same thing happened. I think there was
9 just a little bit more. Yes, so what is happening there is
10 that I was expressing very strong frustration. I said -- the
11 cliche I was using was "expect the unexpected." You should
12 always have a plan B or an escape route, etc. I never imagined
13 that what was going to happen was going to happen. The idea
14 that we were planning -- or I was at the very least planning on
15 this chaos is simply undermined by my very visceral reaction at
16 the time.

17 I would like to enter in my own defense the audio
18 rant that has been played for you previously a few times. I
19 will apologize to you for making you listen to it again. It is
20 a fair and accurate representation of my voice. It is -- my
21 copy is Defendants' Exhibit 1018. I would like to submit it
22 into evidence and publish it to the jury.

23 THE COURT: Be admitted, and you may publish.

24 (Defendant Spencer Exhibit 1018 marked.)

25 (Defendant Spencer Exhibit 1018 admitted.)

R. Spencer - Direct

1 MR. SPENCER: Let's just play it once more. This was
2 taken later on that day, after the death of Heather Heyer had
3 been known to the public, probably after the first time I ever
4 heard the name James Fields in my life. And I think it's
5 important that you get the truth and the whole truth. And the
6 whole truth is not always nice. The whole truth sometimes
7 contains a lot of warts. And these are mine.

8 MS. KAPLAN: Your Honor, I understand he's *pro se* and
9 it's difficult, but can we just limit the discussion to facts
10 rather than truth, whole truth.

11 THE COURT: Right now just put on evidence. Don't
12 comment.

13 MR. SPENCER: Fair enough.

14 (Audio playing.)

15 Okay. I want to put that into context. I began
16 saying, "I can't believe they did this, I'm so fucking angry
17 right now." I was so fucking angry at that point with the
18 Charlottesville and state police for destroying what I thought
19 was going to be yet another stop on the Spencer promotional
20 tour. It was another point where I would be able to say things
21 that I sincerely believe in, that are provocative, and that
22 would certainly gain attention and promote my career. And I
23 felt that the Charlottesville police had destroyed that, and I
24 was also morally outraged at the fact that they did this.

25 In a -- when I was feeling powerless, feeling

R. Spencer - Direct

1 extremely frustrated, I descended into an infantile,
2 despicable, and shameless rant. That rant was heard by, I
3 believe Mr. Kessler agreed, half a dozen to ten people in a
4 private room. That rant was given after I had experienced what
5 I had experienced on August 12th, after it had -- it was
6 dawning on me that this thing was a disaster, and that it was
7 going to be viewed not as the latest stop on the Spencer tour,
8 but as something deeply shameful. I descended into a childlike
9 rage.

10 I'm going to have to live with this. It's true. It
11 is me. It is certainly the worst part of me, but there it is.
12 I enter that in my defense as an expression of my shame,
13 outrage, fear, and similar emotions with -- regarding to how
14 the event turned out. That is one of the most awful things in
15 the world, but it might actually be a real one.

16 MS. KAPLAN: Your Honor, same objection. He's
17 putting it in.

18 MR. SPENCER: I'm testifying.

19 THE COURT: He's explaining why he said it. It's in
20 evidence.

21 MR. SPENCER: I am now going to return -- this has
22 already been admitted.

23 This is, you might remember, my correspondence with
24 the *Washington Post* reporter, Joe Heim. On August 12th, 2017
25 at 1:10 p.m., he says that -- I had gone to McIntire Park. I

R. Spencer - Direct

1 had actually spoken to reporters and supporters -- supporters
2 and the media, and he had heard that.

3 Then we move to August 12th. "Did you happen to know
4 the driver of the car, James Alex Fields?" This is around the
5 time when his name had first reached recognition.

6 I said, "No, never heard of him."

7 "Do you have any comment on his actions that left one
8 dead and 19 injured?" And I'm sorry this gets cut off a little
9 bit, but it's still legible. "And do you believe you bear any
10 responsibility for this happening?"

11 I said, "I absolutely bear no responsibility. I'm
12 deeply saddened by the actions. But we need to let the dust
13 settle. We don't really know what happened."

14 MS. KAPLAN: Your Honor, can we get a similar
15 instruction that this is limited only to Mr. Spencer's state of
16 mind and can't be offered for the truth?

17 MR. SPENCER: Oh, yeah. Oh, yeah. That's how I'm
18 presenting it.

19 MS. KAPLAN: It's classic hearsay, Your Honor, so if
20 it's for state of mind, that's one thing, but...

21 MR. SPENCER: It's my state of mind as I'm
22 communicating it.

23 THE COURT: He can explain how he felt. There's lots
24 of evidence about how -- the reaction to this, and he can tell
25 us his personal feelings.

R. Spencer - Direct

1 MR. SPENCER: Right.

2 THE COURT: But it's not necessarily true. If he
3 describes something else, that's not admissible for the truth
4 of it, but only as to how it affected him.

5 MR. SPENCER: I recognize this as a fair and accurate
6 depiction of a tweet I made at 12:38 p.m., and I would like to
7 submit it into evidence as Defendants' Exhibit 1039 and publish
8 it to the jury.

9 THE COURT: Be admitted, and you may publish.

10 MR. SPENCER: So this was shortly after being
11 expelled from the field. This is 12:38 p.m., as you can see, on
12 August 12th.

13 (Defendant Spencer Exhibit 1039 marked.)

14 (Defendant Spencer Exhibit 1039 admitted.)

15 MR. SPENCER: This is also coming after I made that
16 car video where I was describing what happened and expressing
17 outrage. I certainly had some bad moments that day, but I also
18 had some good moments.

19 This is a tweet that went out at 12:38 p.m. That is
20 roughly 45 minutes to an hour before the death of Heather
21 Heyer, but after it had become clear to me that chaos was
22 beginning to reign in Charlottesville. And I tweeted this out
23 publicly to anyone who would read it. Of course, the people
24 who were my supporters at Unite the Right would probably be
25 more likely to read it, but at this point I have tons of

R. Spencer - Direct

1 people -- I'm sure hundreds of thousands. "My recommendation:
2 Disperse. Get out of Charlottesville city limits. State of
3 emergency has been called."

4 I had some bad moments; I had some good moments. I
5 made the right call. If that call had been heeded, much less
6 violence would have occurred.

7 MS. KAPLAN: Again, Your Honor, he's getting close to
8 argument. I understand he's *pro se*, but it's starting to sound
9 more like a closing than testimony.

10 THE COURT: Sustained.

11 MR. SPENCER: Okay. Your Honor, I have one more
12 thing that I want to do, but if you would like to break now, I
13 could do that afterwards, or I could get started, depending
14 on --

15 THE COURT: We can go on to 12:30 at least.

16 MR. SPENCER: Okay. One last tweet.

17 I think you saw this yesterday. This is -- or you
18 saw one part of this yesterday.

19 This is a fair and accurate depiction of a tweet I
20 made on August 18th, 2017. I would like to submit it to
21 evidence as Defendants' Exhibit 1019 and publish it to the
22 jury.

23 THE COURT: Be admitted. Publish it.

24 (Defendant Spencer Exhibit 1019 marked.)

25 (Defendant Spencer Exhibit 1019 admitted.)

R. Spencer - Direct

1 MR. SPENCER: Well -- I'll read it for you first.

2 So a few days after the event, at least for me,
3 emotions had subsided. Kessler tweeted out, "Heather Heyer was
4 a fat, disgusting communist. Communists have killed
5 94 million. Looks like it was payback time." And he links to
6 *The Daily Stormer*.

7 I saw this, and I guess in about an hour after it had
8 been published, I tweeted this: "I will no longer associate
9 with Jason Kessler; no one should. Heyer's death was deeply
10 saddening. Payback is a morally reprehensible idea."

11 Now, to be fair to Mr. Kessler, emotions are high,
12 and I can to some degree -- being that --

13 MR. KOLENICH: Objection. This is argument, not
14 evidence.

15 THE COURT: Sustained. Just a minute.

16 THE CLERK: Never mind. I'm sorry.

17 MR. SPENCER: Can I also describe my state of mind at
18 the time?

19 THE COURT: Well, you -- but your state of mind about
20 you, not about Mr. Kessler or anything like that.

21 MR. SPENCER: Fair enough.

22 THE COURT: You'll have an opportunity to argue in
23 your closing argument.

24 MR. SPENCER: Good.

25 I -- this was days after the event. I wanted to get

R. Spencer - Direct

1 as far away from Jason Kessler as possible. I don't think
2 there's much more that needs to be said.

3 Okay. I don't want to turn this into a lecture or
4 anything like that, but I am going to now show you a short
5 piece that the plaintiffs actually brought up during my
6 cross-examination. It's a piece that I published on
7 August 11th that was made in collaboration with some other
8 people, sure, but it was certainly my words. I think it
9 expresses the way that I was thinking at the time, and it also
10 expresses what I wanted to gain from the event. And that is a
11 piece that's already been showed to you -- well, I don't even
12 need to show it. I tweeted it out on August 11th. I don't
13 need to show that.

14 Let me find this. Here it is. Okay. 1021. This is
15 so blurry.

16 So this is Defendants' Exhibit 1021. It is a fair
17 and accurate representation of an article that I penned called
18 "What It Means To Be Alt-Right" published on August 11th, 2017.
19 And I would like to submit it to the jury -- sorry, submit it
20 into evidence and publish it to the jury.

21 THE COURT: All right. Be admitted.

22 (Defendant Spencer Exhibit 1021 marked.)

23 (Defendant Spencer Exhibit 1021 admitted.)

24 MR. SPENCER: This is -- this was published the day
25 of the torchlight rally, a day before the August 12th event. I

R. Spencer - Direct

1 got a feeling that this was going to be a very large rally,
2 that there was a tremendous amount of interest, and I wanted to
3 kind of sum up how we felt at the time. Now, my thoughts have
4 evolved a bit since then, but this is accurate, what I was --
5 how I thought at the time.

6 This is a -- I think 20 points -- 18. This basically
7 took up some major topics and communicated how I think we
8 should think about them.

9 Race. Race is real. Race matters. Race is the
10 foundation of identity. White --

11 THE COURT: Are you going to go through this whole
12 thing?

13 MR. SPENCER: I am.

14 THE COURT: No. It's already in evidence and it's
15 just not -- you can sum it up, but you're not entitled to --

16 MR. SPENCER: Your Honor, the plaintiffs have taken
17 three and a half weeks of going through all sorts of --

18 THE COURT: Well, I know, but this -- this is -- this
19 is -- it's in evidence if the jury wants to read it. Now, you
20 can highlight it, but not go through the whole thing. I mean,
21 you all discussed it in your direct. You were asked about it.
22 You testified about it.

23 MR. SPENCER: Okay. That's fair.

24 THE COURT: All right.

25 MR. SPENCER: This is a definition. I began with the

R. Spencer - Direct

1 definition of race as a foundation of identity, as something
2 that we are born into and that is -- as I understood it at the
3 time, is a kind of basis for our identity as we achieve it
4 afterwards. You can have many different forms of personal
5 identity. You can have duties, loyalties, hobbies, all sorts
6 of things. But your family that you are born into is
7 paramount. There is a concept of Indo-European or Aryan that
8 is a very large genetic cluster, including the Europeans,
9 including many people who are now Hindus, and so on. It's a
10 language group, mostly. And I also define European as a kind
11 of Celtic, Germanic, Hellenic, Latin, Nordic, and Slavic. That
12 is all the people of Europe, and I think they have, maybe, a
13 more closely aligned identity within that.

14 I define -- now, obviously talking about Jews is --
15 at least in this context -- is rather controversial, but I
16 think you can examine how I was depicting them. My thoughts
17 have evolved on this a bit, but this is accurate for the time.
18 They're an ethnoreligious people.

19 MS. KAPLAN: Your Honor --

20 MR. SPENCER: You know, I'm not going to be perfect.

21 MS. KAPLAN: I know. I understand.

22 Your Honor, relevance on how his thoughts have
23 evolved, or that they have evolved.

24 MR. SPENCER: Okay. Well, I'll cut that off.

25 THE COURT: He just said it. But --

R. Spencer - Direct

1 MR. SPENCER: Well, I'll actually mention this: I am
2 not claiming to you that I have somehow seen the light and I'm
3 now going to speak out against antiracism like you have heard
4 from Jeff Schoep and Samantha Froelich. To be frank, I don't
5 buy it for those people, to be frank, both of them. I am
6 still, no doubt, an ideological radical, but there is also a
7 way that I can evolve, and I imagine, to be honest, the failure
8 and disaster of Charlottesville had something to do with that.
9 But I am not claiming that you should not punish me because I'm
10 now a liberal. I'm not. I will always be honest.

11 MS. KAPLAN: I ask that that be stricken.

12 MR. SPENCER: You asked for it.

13 THE COURT: Go ahead, Mr. Spencer.

14 MR. SPENCER: At various times, Jews have existed
15 within European societies, but I think I was asked at one point
16 in 2016, "Are Jews white?" And my answers was: "Jews are
17 Jews." I think what is unique about them is the fact that they
18 have remained a people over millennia is one of the greatest
19 miracles in the world. It has quite a bit to do --

20 THE COURT: All right. That's not --

21 MR. SPENCER: Okay. Fine. I mean, Your Honor, they
22 have taken up so much time.

23 THE COURT: It makes no difference.

24 MR. SPENCER: Well, it does make a difference.

25 THE COURT: That doesn't give you three weeks because

R. Spencer - Direct

1 they took three weeks. I have done my best to try to keep this
2 to evidence that's only admissible on the issues in this case.
3 Now, I know I've failed many times, but the fact that I might
4 have let something come in that shouldn't have come in doesn't
5 change the rules. I have to try every time. And this is going
6 beyond the scope of this trial.

7 The questions are -- the issue is: Did you conspire
8 with anyone to come here and commit racial animus-based
9 violence? And that's what the defense ought to be.

10 MR. SPENCER: I get it.

11 THE COURT: You may not come and justify your
12 beliefs. No one is entitled to do that. We are sticking to
13 the elements of the case that the plaintiff has to prove.

14 MR. SPENCER: Your Honor, with respect to my case,
15 the plaintiffs have never stuck to the real truth, because they
16 have not even attempted to demonstrate that I was conspiring to
17 commit violence. They stuck to my ideology and claiming that
18 I'm a terrible human being.

19 THE COURT: Okay.

20 MR. SPENCER: And that should be enough. And I'm
21 trying to humanize myself, and I'm going to do it in a very
22 reasonable amount of time.

23 THE COURT: Okay. But right now we're going to go to
24 lunch. Think about it and try to adhere to what I've said.

25 MR. SPENCER: Yes, sir.

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1 THE COURT: We're going to take one hour now for
2 lunch. Come back at 1:30.

3 Do not discuss the case with anyone or allow anyone
4 to discuss it with you or remain within hearing of anyone
5 discussing it.

6 **(Jury out, 12:31 p.m.)**

7 (Recess.)

8 THE COURT: All right. Mr. Spencer, just to follow
9 up on what I told you earlier: The reason the plaintiff in
10 this case took three weeks -- and maybe they took more time
11 than they needed to, but they have the burden of proof.

12 MR. SPENCER: Fair.

13 THE COURT: They have nine plaintiffs they have got
14 to prove in a case against 21 defendants. You are one person,
15 not, you know, all of them. And if the tables were turned, if
16 there were Jewish people who came to Charlottesville and
17 attacked or had a fight with Christians and the Christians
18 wanted to sue the Jewish people, they would have to prove that
19 the Jewish people acted with religious or racial animus. And
20 they would take -- they would be in the same position as the
21 plaintiffs.

22 MR. SPENCER: Okay.

23 THE COURT: The fact -- I mean, I know it hurts your
24 reputation to be in this situation, but the fact that you're a
25 nice person is not -- not a defense. The defense has to be

R. Spencer - Direct

1 that you didn't -- you did not conspire, and if you did
2 conspire, you planned to come here only for --

3 MR. SPENCER: Right.

4 THE COURT: -- peaceful reasons.

5 MR. SPENCER: Can I say two things really quick? And
6 I'll keep it very brief.

7 I have not asked for a character witness to come in
8 at any point. So I'm not really claiming that I'm a nice
9 person, because I'm kind of a very flawed person, so I've
10 actually kept character out of this.

11 I'm talking about this because this is published the
12 day of the rally. If I were sending out messages to people,
13 it's going to be here. That's why I'm doing it.

14 But I do hear you, and I will respect what you just
15 said.

16 THE COURT: All right. But the issues in the case,
17 the main thing is: Did you join a conspiracy that may have
18 already existed?

19 MR. SPENCER: Right.

20 THE COURT: Were you a part of it? And were you
21 motivated -- was the conspiracy -- not so much you, but was the
22 conspiracy motivated by racial or religious animus?

23 MR. SPENCER: Correct.

24 THE COURT: Okay. Let's call the jury back.

25 **(Jury in, 1:33 p.m.)**

R. Spencer - Direct

1 THE COURT: All right. You may be seated.

2 And you may proceed, Mr. Spencer.

3 MR. SPENCER: I will be brief. I'm going to focus on
4 two key ideas.

5 Again, this essay is short. It's available for you
6 to read. I'm going to submit two additional essays by me that
7 are kind of summarized in this document. You could read those,
8 if you'd like.

9 I would remind you, now that we're back, this was
10 published the day of the torchlight rally in the morning. It
11 was the most-viewed article on that website called
12 alt-right.com. So this is about as timely and relevant as you
13 can get. This was viewed by many different people, but I think
14 it's fair to say that it was viewed absolutely by the people
15 attending the rally. I can't estimate, but it's fair to say
16 that -- I don't know -- a third or a half of them actually read
17 this on the day it was published. And so I think it is quite
18 relevant in that sense.

19 I'm going to focus on two things. One is the concept
20 of the ethnosestate, and the other is metapolitics.

21 It's been suggested by the plaintiffs that
22 Charlottesville was about a racial ethnosestate, and maybe even
23 creating one at the time and so on, by engaging in, you know,
24 fights with Antifa.

25 Now, I can't speak for everyone who attended and I

R. Spencer - Direct

1 cannot speak for all of the defendants. Throughout my career
2 and certainly on the day of the event, my message to everyone
3 was that the ethnosestate is a big government -- governmental
4 concept. You don't create an ethnosestate by getting in
5 fistcuffs with Antifa. An ethnosestate could only exist on that
6 highest plane of politics, which is the level of the state.

7 I'm going to just read two very short paragraphs and
8 that's it.

9 "Nations must secure their existence and uniqueness
10 and promote their own development and flourishing. The state
11 is an existential entity."

12 I actually agree with Christopher Cantwell in the
13 sense that, on some basic level, politics is violence, in the
14 sense that politics isn't consensual. When the government
15 makes you pay a parking ticket or when the government puts you
16 in prison, it is using force. And who is able to use force is
17 the fundamental political question.

18 So the state is an existential enemy -- the state is
19 an existential entity, excuse me. You can't get away from it.
20 It is, at best, a physical manifestation of the people's being,
21 order, and will to survive. Racially or ethnically defined
22 states are legitimate and necessary.

23 I did purposely use generalized language. There are
24 racial and ethnically defined states right now. Japan is an
25 excellent example. Israel is an excellent example. To a

R. Spencer - Direct

1 degree, Sweden is a state for the Swedish people.

2 The other thing I wanted to stress, and then I'll
3 move on, is the concept of metapolitics. Now, this essay is
4 called "A metapolitical manifesto for the alt-right movement."
5 "Meta" is a Greek word that means "over" or "across." You know
6 words like "metaphor." You might know a word like
7 "metaphysics." I won't go into it, but Plato, the idea that
8 there are -- you know, the ideal of beauty is out there. There
9 are things that are beautiful, but there is beauty in itself
10 somewhere. That is metaphysics. Deeply Christian concept as
11 well, for what that's worth.

12 I am making a metaphysical -- a metapolitical or
13 metaphysical, you could say, statement. Spirit is the
14 wellspring of culture, and politics is downstream of that. So
15 culture and politics emerge from spirit, or you could say
16 psyche. The alt-right wages a situational and ideological war
17 on those deconstructing European history and identity.

18 So spirit is at the core of this. And in that realm,
19 as I imagined it at the time, the alt-right is engaging in a
20 situational and ideological war. There has been a lot of talk
21 about declaring war and so on. This, if you determine it, is
22 an expression of what I meant by that.

23 I hope that was brief, and I'll leave it there.

24 THE COURT: All right. Thank you.

25 All right. Will you take the stand so that you can

R. Spencer - Cross

1 be cross-examined?

2 MR. SPENCER: Yes.

3 MS. KAPLAN: Would you like us to go first, Your
4 Honor?

5 THE COURT: Yes.

6 (Pause.)

7 MR. BLOCH: My apologies, Judge.

8 CROSS-EXAMINATION

9 BY MR. BLOCH:

10 Q Good afternoon, Mr. Spencer.

11 A We meet again.

12 Q Mr. Spencer, could we pull up the tweet that -- the
13 retweet about Heather Heyer. I believe it was D -- is it 1039?
14 1019?

15 Could we pull that up, Mr. Spalding.

16 It's possible that -- do you have --

17 A I could help you out if you want me to, but I would have
18 to leave this box. It's up to you.

19 MR. BLOCH: Do you have a hard copy?

20 BY MR. BLOCH:

21 Q I believe I'm referring to D1019, and this was a tweet
22 that you just showed where you were retweeting what Mr. Kessler
23 tweeted about Heather Heyer, right?

24 A Correct. Correct.

25 Q And Mr. Kessler tweeted about Heather Heyer at August

R. Spencer - Cross

1 18th, 2017 at 11:25 p.m; is that right? Do you need to see
2 this to refresh your recollection?

3 A I'll take your word for it.

4 Q And you then retweeted Mr. Kessler's tweet, and your tweet
5 was, "I will no longer associate with Jason Kessler. No one
6 should. Heather's death was deeply saddening. Payback is a
7 morally reprehensible idea." Right?

8 A Yes.

9 Q And you tweeted that at 12:38 a.m. on August 19th, 2017;
10 is that right?

11 A That sounds right.

12 Q Isn't it true, Mr. Spencer, that the reason why you
13 tweeted that was as a tactical move to improve your legal
14 situation?

15 A No. I had no idea about my -- this case came months
16 afterward. No, that is an honest move. That kind of
17 discussion, particularly written, that is gross.

18 Q And just to be clear, you were involved -- there was a
19 lawsuit against you at that time that had already been
20 initiated, right? We talked about that?

21 A That might be true. Yeah, I do remember a kind of lawsuit
22 that emerged almost immediately, I think. It withered on the
23 vine.

24 Q Okay. If I could introduce PX-3960A, 3960B, 3960C, D, E,
25 F, G, I, J, U, DD, and EE. And I believe -- is there another

R. Spencer - Cross

1 copy so I can give this to Mr. Spencer?

2 MR. BLOCH: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MR. BLOCH:

5 Q Mr. Spencer, I've handed you a series of text messages,
6 right?

7 A Yes.

8 Q And these are text messages -- and now it's up on the
9 screen -- between you and Elliot Kline, right?

10 A Uh-huh.

11 MR. BLOCH: And if I could just move all of these
12 into evidence and publish to the jury.

13 THE COURT: Without objection, they'll be admitted.

14 (Plaintiff Exhibits PX-3960A, 3960B, 3960C, 3906D,
15 3906E, 3906F, 3906G, 3906I, 3906J, 3906U, 3906DD, and 3906EE
16 marked.)

17 (Plaintiff Exhibits PX-3960A, 3960B, 3960C, 3906D,
18 3906E, 3906F, 3906G, 3906I, 3906J, 3906U, 3906DD, and 3906EE
19 admitted.)

20 BY MR. BLOCH:

21 Q Mr. Spencer, 3960A is a text from you to Elliot Kline,
22 right?

23 A Right.

24 Q And the time stamp is 8-19 -- August 19, 2017, and it says
25 12:39 a.m. UTC-4, right?

R. Spencer - Cross

1 A Okay.

2 Q Do you understand the time that's reflected on there is
3 UTC time, which means it's four hours behind the time that's
4 depicted? So in fact, this tweet -- this text was sent by you
5 to Mr. Kline at 8:39 p.m.?

6 A Okay. That's that...

7 Q And you said -- let's just go one at a time. You said,
8 "It's time to dump on Kessler," right?

9 A Yes. I probably meant it's time to dump Kessler, but
10 that's what I wrote. So whichever. More or less the same
11 thing.

12 Q And if we could go to the next tweet, you say -- text,
13 sorry -- "he just praised the death of Heyer," right?

14 A Right.

15 Q And then Mr. Kline says to you, "What a fucking idiot,"
16 right?

17 A Sounds right.

18 Q And then you say, "Let's unload."

19 A Uh-huh.

20 Q Right?

21 A "Let unload." I'm sure I meant let's unload.

22 Q Sure. "Let's unload everything," right?

23 A Yeah.

24 Q Then Mr. Kline says, "Yeah, gotcha." He says, "He's
25 already getting slammed a great deal from all other sides.

R. Spencer - Cross

1 Should be easy." Right?

2 A Right.

3 Q And you said, "He wants to go to jail apparently"?

4 A Yeah.

5 Q And Mr. Kline says, "Should I text him now and tell him to
6 delete it and claim he was hacked," right?

7 A Uh-huh.

8 Q And you didn't agree with that idea, did you?

9 A I don't remember agreeing to that, lying, no.

10 Q And then you say, "I'll tweet too," right?

11 A Right.

12 Q And then you sent that tweet, right?

13 A Yeah. Is that the right order? I'll take your word for
14 it. The tweet came after that exchange?

15 Q Correct.

16 A Yes, right.

17 Q And then Mr. Kline texted you the next day -- this is from
18 Mr. Kline to you at 8-19 -- August 19th, right?

19 A Uh-huh.

20 Q And he says, "Weev did not hack it, but claimed he did
21 because he knew we were in a lawsuit and knew he could take the
22 fall. He fell on a grenade for us and gave us plausible
23 deniability. He believes that Kessler was hacked based on his
24 password being the same as it was on Red Ice most likely
25 because there have been a few accounts that's happening to. I

R. Spencer - Cross

1 think Kessler is just a crazy moron and tweeted it. He was
2 freaking out to me earlier. Either or, it doesn't matter. We
3 did the right move tonight." Right?

4 A Yeah.

5 Q And then you respond -- we may not have it on the screen,
6 but do you agree with me that you respond, "Good"?

7 A That sounds right.

8 MR. BLOCH: Nothing further, Judge.

9 THE COURT: All right. Thank you. Anyone?

10 MR. KOLENICH: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. KOLENICH:

13 Q Good afternoon, Mr. Spencer.

14 A Good afternoon.

15 MR. KOLENICH: Could I show the witness the screen?

16 Q Do you see the screen, Mr. Spencer?

17 A Not yet.

18 Q Not yet.

19 THE CLERK: We did HDMI, didn't we?

20 MR. KOLENICH: Yeah. There we go. Thank you.

21 BY MR. KOLENICH:

22 Q Mr. Spencer, early on in your testimony you showed tweets
23 that were attached to your discovery responses from when you
24 were represented by counsel; do you recall that?

25 A Right.

R. Spencer - Cross

1 Q These are additional pages from that document. I'll
2 direct your attention to page 25, as listed on the bottom of
3 the page. These are not the ECF page numbers, but the page
4 numbers your attorney attached?

5 A Right.

6 Q Your tweets are on the right-hand side of the page in
7 black; would you agree?

8 A No, those aren't tweets. This is a text exchange. So
9 it's a private text exchange. Who is it between?

10 Q I'll scroll up. It appears to be EM, Eli Mosley.

11 A Eli Mosley. Yes.

12 Q Do you agree with that?

13 A Yes.

14 Q You see Mr. Mosley has advised you that there is a woman
15 named Evelyn Goldberg whose maiden name was Kessler?

16 A Right.

17 Q Mr. Mosley further advises you, "He -- he's Jewish. This
18 is his grandma. Lol." That would be a reference to Jason
19 Kessler, would it not?

20 A Yes.

21 Q Further down on the right you say, "I was right to see his
22 lack of Sieg Heiling as a sign"; is that what it says?

23 A Yes.

24 Q Can you explain to the jury what that's in reference to?

25 THE CLERK: Mr. Kolenich, is this a previously

R. Spencer - Cross

1 admitted exhibit?

2 MR. KOLENICH: Yeah, but I'll admit each page as a
3 separate exhibit in rebuttal.

4 THE CLERK: I just want you to know they are not
5 seeing it at this point.

6 MR. KOLENICH: Your Honor, he has identified this
7 page, 25. I'd move it in as Kessler Rebuttal Exhibit 10.

8 THE COURT: Be admitted.

9 MR. KOLENICH: Thank you. May I publish to the jury,
10 please?

11 THE COURT: You may.

12 (Defendant Kessler Exhibit 10 marked.)

13 (Defendant Kessler Exhibit 10 admitted.)

14 BY MR. KOLENICH:

15 Q Now the jury can see it as well, Mr. Spencer. "I was
16 right to see his lack of Sieg Heiling as a sign." Can you
17 explain what you meant by that?

18 A Sure. So again, I don't know the veracity of any of these
19 allegations, and I don't care. The "I was right to see his
20 lack of Sieg Heiling as a sign" is a reference to -- there is a
21 video that I think the jury was shown about the Charlottesville
22 1.0 afterparty where there was a lot of drinking and, you know,
23 frat boy behavior, to be frank, including Sieg Heiling and so
24 on, doing Roman salutes or Hitler salutes, whatever you want to
25 call it.

R. Spencer - Cross

1 Yeah, I remember some discussion that he was kind of
2 scurrying around in the back and not kind of participating in
3 this group stupidity. So that is what that was a reference to.
4 Hardly definitive about anything.

5 Q More alt-right joking around, Mr. Spencer?

6 A Yeah. If you want alt-right joking around, that is maybe
7 the best example of it, yes.

8 Q Very well. So you'll agree with me that these texts were
9 sent on July the 27th, 2017?

10 A Yes.

11 Q Would you further agree with me that you were not working
12 with Mr. Kessler, at least from that point?

13 A Well, I would agree with that. I mean, I was -- I have
14 given all of our -- the texts between Kessler and me, I put the
15 whole thing into evidence. The jury can judge the degree to
16 which we were ever working together. I mean, he invited me to
17 participate in his rally. I was not intimately or actively
18 working with him in terms of logistics or so on.

19 Q We understand you --

20 A But in a sense of --

21 Q Mr. Spencer, you've answered it. That will be enough.

22 A Okay.

23 Q He would not do the Sieg Heil salute and therefore you
24 didn't trust him; isn't that correct?

25 A No. No. It was kind of like I did not really want to

R. Spencer - Cross

1 have anything to do with Kessler from my brief interactions
2 with him. This was hardly definitive. It was kind of bashing
3 on a private message channel.

4 Q Thank you.

5 Turning to page 27. On the left, this is again Eli Kline?

6 A Uh-huh.

7 Q "I've removed Kessler from all operational calls starting
8 today. All the security and leadership are getting orders from
9 me. Oh, and the Jews canceled my Airbnb, etc." Your response
10 is "thumbs up"; is that correct?

11 A Right.

12 Q Could you please explain to the jury why Mr. Kline is
13 reporting his operational moves to you rather than to Nathan
14 Damigo or Identity Evropa?

15 A He -- Eli Kline was a very energetic person who I guess
16 uncharitably you could say was kissing my butt and trying to
17 talk to me all the time and so on. He's reporting this. I
18 don't know how accurate that is. Eli Kline was pretty loose
19 with the truth. He's simply telling me -- and this is bold
20 stock talk. "I'm in charge now," etc. I said, good call.
21 Whatever. Nothing more than that. I presume he was reporting
22 to Nathan Damigo as a member of Identity Evropa too.

23 Q You presume?

24 A I don't have any evidence for that. I'm not in their
25 private messages.

R. Spencer - Cross

1 Q You didn't tell him, go tell Damigo, you sent the message
2 to the wrong guy, did you?

3 A No. But I --

4 Q And that's not because he was your employee; is that your
5 testimony?

6 A He was never my employee.

7 Q Understood.

8 A That is my testimony.

9 Q Understood. Turning to page 39, same document. All
10 right, this is a conversation, as you can see at the top, with
11 Jason, JK. Would you agree that's Jason Kessler?

12 A Yes.

13 Q On the right-hand side you say, "I'm sorry, but I won't
14 attend the press conference today. You're not listening to
15 leadership."

16 Could you please explain to the jury what leadership you
17 were referring to there?

18 A Yes, I was referring to me, because I was the alt-right.

19 Q The answer is you're referring to you?

20 A Yeah.

21 Q You're the alt-right?

22 A Mr. Kolenich, throughout 2017, that was how I saw it. And
23 I --

24 Q Fair enough.

25 A -- created a press conference that occurred that Nathan

R. Spencer - Cross

1 Damigo --

2 Q Mr. Spencer?

3 A I'm going to complete it.

4 Q That's your answer. That's your answer. You were the
5 leadership over Mr. Kessler's head that you're referring to?

6 A Of the alt-right broadly, not of the UTR conference.

7 MR. KOLENICH: Very well. No further questions.

8 Thank you.

9 THE COURT: Okay. All right.

10 MR. CAMPBELL: Your Honor, I have like five minutes
11 of a completely different inquiry that isn't responsive to his
12 direct testimony that I wanted to put in in my case in chief.
13 Shall I do it now?

14 THE COURT: Yes. I mean, you can put it in through
15 him, through Mr. Spencer?

16 MR. CAMPBELL: Yes, Your Honor.

17 THE COURT: Okay. Sure.

18 MR. CAMPBELL: Could we, other than just my
19 statement, maybe let the jury know this is in Fields's case in
20 chief rather than a continuation of the other questioning.

21 THE COURT: Yes. You consider the questioning here
22 by Mr. Campbell of Mr. Spencer as part of Mr. Fields's case.
23 If you want to do it now rather than call Mr. Spencer back
24 later to do it. So this is part of Mr. Fields's case. Go
25 ahead.

R. Spencer - Cross

1 MR. CAMPBELL: Thank you very much, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. CAMPBELL:

4 Q Good afternoon, Mr. Spencer. Do you have Twitter? Do you
5 have a Twitter account?

6 A Yes.

7 Q Did you have a Twitter account back in 2017?

8 A Yes.

9 Q Did you have -- when did you first get Twitter, if you
10 recall?

11 A I think 2011.

12 Q So you've been familiar with the platform for a decade?

13 A Yes.

14 Q All right. And generally savvy with social media?

15 A Yes.

16 Q Seems like you have a number of different platforms and
17 you're posting things relatively frequently?

18 A Twitter was the main one. That's what I always focused
19 on.

20 Q And I think you had testified earlier that kind of 2017
21 was the height of your fame?

22 A Yes, or infamy.

23 Q Do you recall how many followers you had on Twitter back
24 in 2017?

25 A Well, around the time of the conference, I was over 70,000

R. Spencer - Cross

1 followers. And certainly individual tweets, when they either
2 were controversial or someone was tweeting at me who was a
3 celebrity or something, these would have a reach in the
4 hundreds of thousands. But 70,000 followers right at the time
5 of the UTR.

6 Q Did you know each and every one of those 70,000 followers?

7 A Not even close.

8 Q Did you have any idea of the actual names of the vast
9 majority of the 70,000 followers?

10 A No.

11 Q Can you give the jury some idea of the level of your
12 interaction with followers you knew, that you personally knew?

13 A Well, if there's someone that either I know personally or
14 someone who has at least offered a lot of thoughtful responses,
15 I will very often get into a conversation with someone on
16 Twitter. And again, maybe half and half of people who I know
17 who they are or people who have just kind of proven to me that
18 they're smart and they're contributing, I will definitely get
19 into strings where I'll have a conversation with them.

20 Q Okay. So you would have some interaction, some in-depth
21 interactions even with followers you didn't know?

22 A Yeah.

23 Q Do you have some idea of the percentage of your 70,000-ish
24 Twitter followers whom you knew versus who you did not?

25 A Well, the people I knew personally, one percent at the

R. Spencer - Cross

1 very most. Maybe 25. I'm just guessing here, but, you know,
2 two dozen people who I knew who they were. Really knew, yes.

3 Q Fair to say the vast majority --

4 A The vast majority I have no idea who they are, yes.

5 Q I'm sure you recall seeing some tweets put into evidence
6 by plaintiffs' counsel that were from an account
7 @TheNewGiantDad wherein that Twitter user tweeted at you?

8 A Right.

9 Q Could you tell the jury a little bit about what, if any,
10 notification you would get when one of 70,000 Twitter followers
11 tweeted at you?

12 A So on the Twitter app there's a section called "Mentions"
13 and you might get a notification there. Very often, if it's an
14 account with very few followers, you won't get any
15 notification, actually. If it's an account you follow or if
16 it's a big account, you in all likelihood will get a
17 notification.

18 I was also verified at the time. So I could actually
19 separate mentions to only people who were verified. So
20 obviously that account, which we presume is Mr. Fields, was not
21 verified. So again, the vast majority of mentions that I get,
22 I do not look at and they just kind of escape my notice.

23 Q Can you give the jury some estimate of how many
24 notifications of retweets you might have gotten on an average
25 day in the summer of 2017?

R. Spencer - Cross

1 A Well, it would vary wildly, but that was the height of
2 notoriety. It was way too many to look at during the day. And
3 on certain times, say, around UTR or the time that I was
4 punched in January 20th of 2017, it was so many, I don't think
5 anyone could have handled it. I just didn't even bother.

6 Q Do you have any recollection at all of having any
7 knowledge that an account @TheNewGiantDad ever tweeted at you?

8 A I have no recollection.

9 Q I think you alluded to this earlier in your testimony.
10 Until you heard during the evidence in this case you had no
11 idea that the Twitter account @TheNewGiantDad was associated
12 with James Fields?

13 A Correct.

14 Q Does that notification, that that Twitter account is or
15 was associated with James Fields, does that change your
16 testimony in any way that you've never met or heard of James
17 Fields prior to August 12th, 2017?

18 A Doesn't change it at all.

19 MR. CAMPBELL: Thank you, sir. I don't have any more
20 questions.

21 THE COURT: All right. Anyone else?

22 Okay. Anyone on?

23 THE CLERK: No.

24 THE COURT: Thank you, Mr. Spencer. Please step
25 down.

R. Spencer - Cross

1 THE CLERK: Wait a second.

2 THE COURT: Wait just a minute.

3 THE CLERK: Mr. ReBrook?

4 THE COURT: Mr. ReBrook? Do you have questions?

5 MR. REBROOK: Yes, Your Honor, I do.

6 THE COURT: Go ahead.

7 CROSS-EXAMINATION

8 BY MR. REBROOK:

9 Q Mr. Spencer, good afternoon.

10 A Good afternoon.

11 Q Mr. Spencer, did I hear your testimony correctly on Friday
12 that that was the first day you had ever met Mr. Jeff Schoep?

13 A Yes. In this court, yes.

14 Q Can you describe the nature of your relationship with him?

15 A Nothing.

16 MR. REBROOK: No further questions. Thank you.

17 THE COURT: You may step down. Who's next?

18 MR. CAMPBELL: Your Honor, other than Mr. Spencer's
19 testimony, I just wanted to put one exhibit in, but I did need
20 just a very brief moment to conference with plaintiffs' counsel
21 about how to actually get that in.

22 THE COURT: You may.

23 MR. CAMPBELL: Thank you, Your Honor.

24 MR. KOLENICH: Judge, I have just a brief additional
25 deposition testimony, but it won't be ready until tomorrow. I

R. Spencer - Cross

1 can't put it in today, video deposition.

2 THE COURT: Why is it not ready?

3 MR. KOLENICH: I'm depending on the plaintiffs --

4 MS. KAPLAN: I'll take the blame for that, Your
5 Honor. He wanted a few minutes of us to cut for him of the
6 Samantha Froelich deposition. We've just been overwhelmed
7 finishing our case, but we will have it ready for him tomorrow.
8 I apologize. That way Mr. Spalding can play it.

9 MR. CAMPBELL: Thank you, Your Honor. So the only
10 exhibit we'll be putting in in James Fields's case is a
11 certified copy of the amended judgment in his criminal case in
12 this court, and we have made redactions, and that is in
13 agreement with plaintiffs' counsel.

14 So what I propose to the Court is sort of to describe
15 the document very generally and briefly to the jury, move it
16 into evidence, and then we would submit the actual document
17 following the edits that's going to be in evidence.

18 THE COURT: All right.

19 MR. CAMPBELL: With the assistance of plaintiffs'
20 counsel.

21 THE COURT: You may proceed.

22 MS. KAPLAN: No objection, Your Honor. And I'm just
23 told by Mr. Spalding that the Froelich clip is in fact ready if
24 we want to play that.

25 MR. CAMPBELL: So Judge, Fields would move into

R. Spencer - Cross

1 evidence a certified copy of the August 9, 2021 -- I'm sorry,
2 that's the certification date -- the October 1, 2019 amended
3 judgment in a criminal case, United States of America versus
4 James Alex Fields, Jr. And in that the defendant has pled
5 guilty to Counts One and Two through Twenty-Nine, and has been
6 sentenced to imprisonment, life without the possibility of
7 release as to Count One, life without the possibility of
8 release as to Counts Two through Twenty-Nine, said terms to run
9 concurrently to each other, but consecutively to the term
10 imposed in Count One. And we'll put the actual exhibit in, but
11 I just move it into evidence.

12 THE COURT: All right.

13 THE CLERK: What will that number be?

14 MR. CAMPBELL: Fields 001, if that's okay. That's
15 how it's named in the Box submission.

16 THE COURT: It will be admitted.

17 (Defendant Fields Exhibit 1 admitted.)

18 MR. CAMPBELL: Thank you, Your Honor. Fields rests.

19 MR. CANTWELL: Judge, in addition to my desire to
20 question Mr. Willis and Ms. Romero again, I have a brief
21 presentation that I can put on, but I could also do well to
22 confer with plaintiffs' counsel very briefly if I could have a
23 chance to do that.

24 THE COURT: Yes.

25 MS. KAPLAN: Your Honor, would you like us to play

R. Spencer - Cross

1 the Froelich video as they're doing that?

2 THE COURT: I'm sorry. Can't hear you.

3 MS. KAPLAN: Would it be efficient for us to play the
4 Froelich designations while they're doing that?

5 THE COURT: Yes.

6 MS. KAPLAN: Okay. We'll do that, if that's okay,
7 Mr. Kolenich.

8 MR. KOLENICH: Yes, that's fine. Thank you.

9 (Video deposition of Samantha Froelich played.)

10 THE COURT: All right.

11 MR. KOLENICH: Judge, could I confer quickly, Your
12 Honor?

13 THE COURT: Yes.

14 (Off the record discussion.)

15 MS. KAPLAN: There may be a piece of Ms. Froelich
16 that's missing, Your Honor. We're just trying to confirm.

17 (Off the record discussion.)

18 MR. KOLENICH: Sorry, Your Honor. It's going to take
19 a few minutes to get the list of designations.

20 MS. KAPLAN: We apologize, Your Honor. Mr. Spalding
21 may be the busiest man in this case, and he's just adding the
22 extra stuff now.

23 THE COURT: All right.

24 (Pause.)

25 MS. KAPLAN: We're ready, Your Honor. Can we play?

C. Cantwell - Direct

1 THE COURT: You may. Is this the deposition you were
2 speaking of?

3 MR. KOLENICH: Yes, Your Honor. It's just more of
4 the same one we were just viewing.

5 THE COURT: Thank you.

6 (Video deposition of Samantha Froelich played.)

7 MR. KOLENICH: Thank you, Your Honor. Defendants
8 Kessler, Damigo, and Identity Europa rest.

9 THE COURT: Thank you.

10 All right. Anyone else?

11 MR. CANTWELL: I'll go, Judge. Mr. Cantwell.

12 THE COURT: Mr. Cantwell now is testifying on his own
13 behalf, and we're going to allow him to stand at the lectern
14 and theoretically question himself and answer his questions.

DIRECT EXAMINATION

16 MR. CANTWELL: Hello, Mr. Cantwell. Good to see you
17 again. Yes.

I think somebody else has this screen.

19 All right. Now, I'd like to start with -- I
20 conferred with plaintiffs' counsel earlier. I have this as
21 CCEX-164. This is episode 340 of the Radical Agenda. And I'd
22 like to play from 55:41 to 1:03:53. This is an interview with
23 Jason Kessler while I was en route to Charlottesville,
24 Virginia.

25 || MR. BLOCH: No objection, Judge.

C. Cantwell - Direct

1 THE COURT: Be admitted.

2 (Defendant Cantwell Exhibit 164 marked.)

3 (Defendant Cantwell Exhibit 164 admitted.)

4 (Audio playing.)

5 MR. BLOCH: Objection.

6 MR. CANTWELL: This is offered not for the truth, but
7 my understanding of what happened. This is what Jason Kessler
8 told me. If I have an unlawful purpose and Jason Kessler is
9 telling me that he's speaking to the police and this is what
10 they're telling him --

11 THE COURT: Go ahead. Overrule the objection.

12 (Audio playing.)

13 MR. CANTWELL: So that is the portion I wish to play
14 of CCEX-164.

15 A brief technical note: I still don't have the
16 ability to edit audio. So I have that as the entire audio
17 file. I can edit videos, but not audio. So if there's some
18 capacity to do that before we actually give that file to the
19 jury, I'll work with the technical people to accomplish that
20 goal.

21 The next thing -- and I played that because I wanted
22 to put in context the text messages between Mr. Spencer and I,
23 okay? I sent this man a text message that says, "I'm willing
24 to risk violence and incarceration." And when I say that I'm
25 willing to risk something, it means that I don't find the thing

C. Cantwell - Direct

1 that I'm risking desirable.

2 I don't want violence. I don't want to go to jail.
3 But when I'm talking about the possibility that I might get in
4 trouble, I'm talking about this conversation that I had with
5 what I understood to be the principal organizer of the event
6 that, as you're gathering, there was -- we ended up having a
7 permitted event, but there was some controversy about the
8 permit. Okay? And so this was part of a deliberation that we
9 had. And, you know, there was the potential, there was the
10 discussion of this becoming an act of civil disobedience, that
11 you're in the park, they're telling you to get lost, and you're
12 saying -- as I believe Mr. Spencer did and other people did --
13 you're staying in the park and you're going to be removed by
14 law enforcement. And that is a -- it's not legal, but it's not
15 racially motivated violence, to be certain. It's a horse of a
16 different color, pardon the pun.

17 And so the next thing I want to show you is -- what
18 do I want to show you next?

19 This is CCEX-024A. This is a slightly redacted
20 version of CCEX-024. I don't think there's any objection from
21 plaintiffs' counsel to this being admitted into evidence and
22 published to the jury.

23 MR. BLOCH: My understanding is that there were
24 certain redactions made to this document. Is that the same
25 document?

C. Cantwell - Direct

1 MR. CANTWELL: Yes. 024A is the redactions that I
2 just showed plaintiffs' counsel over there.

3 THE COURT: Be admitted, then.

4 (Defendant Cantwell Exhibit 024A marked.)

5 (Defendant Cantwell Exhibit 024A admitted.)

6 MR. CANTWELL: So this is a blog post titled "Unite
7 the Right Updates." This was published August 8th, 2017 and
8 then it was updated on August 9th, 2017. When members of the
9 jury are able to look at this in evidence, they'll notice that
10 the update is at the top. But I'm going to scroll down to the
11 original post so that you can understand it in time order as I
12 explain to you my experience here.

13 And so the blog post reads: "I'm on my way to
14 Charlottesville, Virginia for the Unite the Right Free Speech
15 Rally this Saturday, August 12th at Noon. The event is planned
16 to take place at what was once called Lee Park, later renamed
17 Emancipation Park by the leftists who now want to remove a
18 monument to the park's original namesake" --

19 (Reporter clarification.)

20 MR. CANTWELL: -- "who want to remove a monument to
21 the park's original namesake, General Robert E. Lee, a Southern
22 defender in the War of Northern Aggression.

23 "A lot of things are going on right now with this
24 event, and I'll try to update this post as information can be
25 made public, so bookmark this page and check back from time to

C. Cantwell - Direct

1 time for information. If you haven't already done so, get on
2 my email list, as I will update people there as well. You can
3 follow the event's primary organizer, Jason Kessler, on Twitter
4 and the event's Facebook page for updates and more information.

5 "The Southern Poverty Law Center, a Jewish communist
6 propaganda publication, has called this event 'the largest
7 hate-gathering of its kind in decades in the United States.'
8 While the Cosmopolitans at the SPLC are known for deceit and
9 hyperbole, and the event has nothing to do with 'hate' on our
10 part, they are not exaggerating the importance of the
11 gathering. As far as they are concerned, this is like the KKK
12 rising back up in America and they are only wrong insofar as
13 this is about something very different than the Klan (though
14 they will be there). Few if any of the speakers would shy from
15 the far overused title of racist, because we've had it with
16 white interests being assigned some sort of special wickedness
17 by other ethnic and racial groups seeking to undermine us in
18 our own countries.

19 "With such disreputable enemies, it should come as no
20 surprise that threats of violence are made against us.
21 Left-wing activists are calling for thousands to descend upon
22 Charlottesville to shut us down, and in typical leftist
23 fashion, some have decided to engage in threats, violence,
24 deceit, and other criminality to accomplish that goal. Using
25 these excuses" -- redacted until end of sentence. "Responding

C. Cantwell - Direct

1 to what has been described as an unprecedented number of phone
2 calls, the company providing liability insurance for the event
3 canceled the policy as well. The city is now insisting it must
4 be -- instead be held at a location far from the Lee monument
5 the demonstration is centered around.

6 "Jason Kessler has rightly said he will not move the
7 event, and he and other organizers are seeking legal remedies.
8 There is a good possibility we will find one as well, just like
9 Richard Spencer managed to get a legal injunction against
10 Auburn University in Alabama this past April. If you are an
11 attorney in Virginia, or if you know one who would like to help
12 us, please contact me or the event organizers.

13 "It is more important than ever that people come to
14 Charlottesville and attend this event. We need to make our
15 presence felt. We need to make sure the city knows that we are
16 not going to be silenced so easily. We need as many people here
17 as possible.

18 "In the meanwhile, we are proceeding as close to
19 originally planned as possible. The police have said they will
20 still cooperate with us by keeping Antifa and other
21 opponents" -- I'm sorry -- "by keeping out Antifa and other
22 opponents, setting up barricades, and doing their best to
23 maintain peace and order in the city. The possibility exists
24 though, that if we do not get legal remedy, it could be
25 declared an unlawful assembly and we could be ordered to leave.

C. Cantwell - Direct

1 If that happens, those staying would be engaged in an act of
2 civil disobedience, risking arrest, exposure to tear gas, and
3 other hazards which present themselves in such scenarios.

4 "Virginia is a state with relatively accommodating
5 gun and self-defense laws with wide reciprocity of carry
6 permits and no prohibition against open carry for those not
7 prohibited from possessing a firearm. Most of" -- many of
8 us -- not most -- "many of us plan on being armed, not only for
9 general purpose and display, but to deal with the very real
10 threat of violent communist agitators who have proven dangerous
11 throughout the country.

12 "Civil disobedience and guns do not go well together,
13 however. No matter what anyone else says, if you never take
14 another word of advice from me again, heed this warning: If
15 you are coming armed, obey the law and the orders of law
16 enforcement, no matter what. You cannot tell the cops to go to
17 hell with a gun on your hip. It puts all of us and our cause
18 at risk. If you are considering disobeying the authorities,
19 you must leave your firearms secured elsewhere. Whatever
20 violent ideas we entertain on the Radical Agenda are not to be
21 carried out here. The Radical Agenda is an entertainment
22 program, and if you try to start a revolution this weekend, it
23 will not be the revolution you bargained for, I promise. If
24 you want to prove yourself a warrior, show some discipline
25 first.

C. Cantwell - Direct

1 "If we end up in a position where we are opposed by
2 communists and cops alike and we are disarmed, the potential
3 for violence is very real. It is my advice that women,
4 children, and men who are not fit for combat do not attend the
5 main event at Lee Park unless" -- redacted -- comma. "And then
6 I have -- and even then, I have serious concerns. I will see
7 what they can do elsewhere to help make our presence felt, but
8 I have female companions who wish to attend this, and I am not
9 permitting them to as a result of this threat.

10 "Jason Kessler called into the Radical Agenda today
11 (Episode 340) to discuss the matter, and that segment of the
12 program has been embedded at the bottom of this blog post. If
13 you have a Baofeng, Puxing, or other handheld two way radio,
14 please bring it. I have a couple of my own and they could be
15 useful for coordinating movements.

16 "If you can't come, but you want to help, please send
17 money. (That page contains ways" -- there's a link to another
18 page. It says "ways to send money to me directly, not the
19 event organizers).

20 "This is about all I feel confidential saying at this
21 juncture. I will know more soon and I will update this blog
22 post with new developments as I can make them public. I will
23 also send out emails and be active on social media."

24 Now, I will scroll back up to the top and read you
25 the update which was posted on August 9th.

C. Cantwell - Direct

1 "I am just outside of Charlottesville right now.
2 I've checked into my motel and had dinner with Jason Kessler,
3 the organizer of the event. Here is where things stand now, to
4 the best of my understanding." And please pardon the redacted
5 following paragraph.

6 "*The Daily Stormer* has issued a call for people to
7 show up, permit or none, and give some advice -- given some
8 advice on what to bring and not to bring. Their advice is to
9 leave your firearms at home, and if you must bring a firearm,
10 please conceal it.

11 "Many of you have asked about meeting up with me
12 personally. Since the main event is likely to be chaotic, we
13 might have trouble catching up at the main event. I am working
14 on coordinating a meetup for Radical Agenda listeners on
15 Friday, but I have to be careful about how the details are
16 announced. Sadly, anything I say to you here, I also say to
17 the media, communists, and other criminal elements. For this
18 event, I encourage those with the legal authority, to carry a
19 concealed firearm."

20 To be clear, what I'm talking about is -- the event
21 that I'm discussing here is what will later be referred to as
22 the Radical Agenda listeners meetup.

23 "Open carry will draw more unnecessary attention to
24 us so if you do not have a license to carry, please secure your
25 firearms elsewhere and let us worry about defense. I'll update

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1 you sometime on Thursday. Thanks."

2 Now you have heard, save for the agreed-upon
3 redactions, the entirety of the UTR updates blog post.

4 What I just referred to as the Radical Agenda
5 listeners meetup is an event that I put together for listeners
6 of my podcast. And the way that I did this to prevent
7 confrontations with counter-protesters was to publish it as
8 paywall content. We mentioned earlier that I have a feature on
9 my website in which content on the website can be limited to
10 paying customers only. And the way that I handled this was to
11 disable new sign-ups before I announced the meetup event so
12 that somebody couldn't, like, find out about the meetup and
13 then pay the \$10 to find out, okay? So the idea being that
14 only -- the only people who would find out about it, at least
15 from my website, would be people who had been paying customers
16 prior to the announcement.

17 And I thought that that would be a reasonable way to
18 deter confrontations at the Radical Agenda listeners meetup
19 because that was very important to me. There was a notable
20 exception to this, as plaintiffs' counsel showed earlier, when
21 they were questioning me, which is I sent Jason Kessler an
22 email. And I said to Jason Kessler, you can tell anyone who
23 has been reasonably vetted about this event. Again, trying to
24 make a sincere effort not to have the sort of confrontations
25 that we're accused of provoking.

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1 So what I would like to show to the jury now is --
2 there's two files I want to show one right after the other so
3 I'll get it out of the way this way, CCEX-114 and CCEX-111.
4 I'd like to publish -- admit both of these into evidence and
5 publish them to the jury so that I can begin explaining what
6 they are.

7 THE COURT: Be admitted.

8 (Defendant Cantwell Exhibits 114 and 111 marked.)

9 (Defendant Cantwell Exhibits 114 and 111 admitted.)

10 MS. KAPLAN: Your Honor, can we just confirm these
11 are both materials on his website? We just don't know what
12 they are.

13 MR. CANTWELL: These were disclosed in January 2020.
14 They're on the exhibits list.

15 THE COURT: Okay.

16 MS. KAPLAN: I know, but I don't have any -- that
17 kind of memory, that I could tell him what it is. If he could
18 just tell us what they are.

19 MR. CANTWELL: These are blog posts from my website.
20 One of them is a capture from, it looks like the Wayback
21 Machine, and the other is I believe a direct PDF printout from
22 christophercantwell.com. CCEX-114 is the -- as it appears to a
23 nonmember. So you see "to access this content you must
24 purchase" -- it's not perfect, but you must purchase a basic
25 membership is what it's explaining there, the highlighted

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1 portion.

2 And this is -- the other, CCEX-111, is what it looks
3 like to a member, which is the entire blog post.

4 MS. KAPLAN: Just to clarify, Your Honor, as I
5 understand, the Wayback Machine means it's no longer available
6 on Mr. Cantwell's website so he had to go back to reconstruct
7 it. Is that correct?

8 MR. CANTWELL: That is not actually the case. When I
9 did this -- you make a legitimate point. I probably could have
10 done this in a more efficient way. I am usually logged into my
11 website. So when I look at my website, what I see is what the
12 administrator sees. No. No. No. I want to correct myself.

13 The reason I did this was to show what it looked like
14 closer to the time. That's why I did it using the Wayback
15 Machine. That's why this is -- I believe I created this file
16 in 2019 and I was trying to get it as close to what it looked
17 like on August 12th, 2017, which is, for the Wayback Machine, I
18 got August 21st.

19 MS. KAPLAN: With that explanation, Your Honor, no
20 objection.

21 THE COURT: Okay. Go ahead.

22 MR. CANTWELL: So this is just to demonstrate the way
23 this works. You see here is my website. These are -- you
24 know, you can see my social media links there. And then as we
25 scroll down, we have -- the title of the blog post is "The

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1 Charlottesville Meetup." "I'm in Virginia for the Unite the
2 Right rally this coming Saturday. Since we have been meeting
3 so much opposition from both the criminal element and the
4 municipal government alike, we've had to exercise a great deal
5 of caution in terms of operational security. So I have
6 temporarily disabled new member sign-ups and made this post
7 available only to existing paying members. I am in
8 communication with a reporter who is covering the event and
9 wants exclusive access to" -- and then what you see there is,
10 "to access this content, you must purchase basic." That is the
11 basic membership. If I recall correctly it was like \$5 a
12 month. And if you -- at this time, if you had clicked on that
13 basic link and you tried to purchase the basic membership, it
14 would have told you that it was out of stock because I had
15 disabled new sign-ups. This was one of the security measures
16 that I took to avoid being confronted at this Radical Agenda
17 listeners meetup.

18 Now we're looking at CCEX-111. And this is what that
19 looks like to a member. And so there's the photograph of me by
20 the monument. You can see my body camera. I still have it at
21 this point. And so I will pick up where I left off on the
22 other blog post.

23 "I'm in communication with a reporter who is covering
24 the event and wants exclusive access to a social gathering
25 outside the main event. I've offered to provide exactly this

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1 in exchange for promotion of the Radical Agenda. I realize not
2 all of you will want to be on camera or otherwise risk this
3 kind of exposure. So I want us to meet up in their absence for
4 a more intimate gathering. Then I will invite the reporter to
5 come join us after those of you who wish to have had a chance
6 to depart. I am working with the reporter on getting a signed
7 agreement that they will not expose the faces or identities of
8 anyone not explicitly offering to be exposed."

9 "Let's plan on meeting Friday, August 11th, in the
10 Walmart parking lot at 975 Hilton Heights Road,
11 Charlottesville, Virginia, 22901, at noon local time. We'll
12 all meet there, wait a half an hour or so for any stragglers,
13 and then head off to our next destination. I'll update this
14 post with more details when the time draws near."

15 But as of the time I created this PDF, there were no
16 updates to add to that -- well, quite a bit happened, but no
17 need to update the members-only blog post in any case.

18 And so the next thing that I want to go to is
19 CCEX-152. This is the body camera video from the Walmart
20 meetup, all right? And this is like a 47-minute video. I'm
21 not looking to play the whole thing, but I would like to add --
22 I would just like to submit the entire video -- I would like
23 the entire video admitted into evidence and published to the
24 jury so that I can skip ahead to a few points in it.

25 There is -- it's one of these things where there is a

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1 distinct absence of something, and I'm not going to put the
2 Court through the trouble of sitting there waiting for
3 something not to happen. If that works for everybody.

4 MS. KAPLAN: Your Honor, we certainly have no
5 objection to the portions of this video that Mr. Cantwell
6 intends to show. Again, I don't have the kind of photographic
7 memory that I've seen the whole video and don't know whether
8 there are any objections. But we'll try to work that out with
9 Mr. Cantwell.

10 THE COURT: If it becomes necessary, we'll have to
11 redact maybe part of it.

12 (Defendant Cantwell Exhibit 152 marked.)

13 (Defendant Cantwell Exhibit 152 admitted.)

14 MR. CANTWELL: For the benefit of the Court I'll note
15 that I don't think -- I'm reasonably certain there is nothing
16 to do with any of our motions in limine in this video.

17 THE COURT: All right.

18 MR. CANTWELL: This is CCEX-152.

19 (Video playing.)

20 MR. CANTWELL: Now, I'll note for the record here the
21 time stamps on this video, unlike the one of the so-called
22 leadership meeting, are actually 12 hours off. This says
23 23:47:28 on August 11th. It's actually noon, not -- it's
24 closer to noon than midnight, I should say. But it's August
25 11th.

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1 (Video playing.)

2 I'll skip ahead. I'm going to try to find -- there's
3 a confrontation that happens here. And I want to record that
4 confrontation for you. This is where -- 13 minutes in.

5 (Video playing.)

6 I'm going to rewind a little bit behind that. 12
7 minutes.

8 (Video playing.)

9 For the record, that's my voice saying "Don't
10 interact with them if you don't have to. Leave them alone."

11 (Video playing.)

12 If you can, try to remember that face. And also
13 remember that black and white Adidas shirt.

14 (Video playing.)

15 For the sake of time alone, I'm going to fast forward
16 to the moment when the police arrive.

17 (Video playing.)

18 In the interest of time I'll just testify that this
19 doesn't get more interesting. The police send us on our way.
20 They don't find their complainant. They did not ask me for the
21 body camera video because they didn't have a complaint.
22 Without a complaining witness, they didn't have a case. They
23 didn't ask me for the evidence, okay?

24 At that point, I reconvened with my listeners in the
25 Walmart parking lot. The police came up to us with the manager

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1 from the Walmart and said that they would like us to leave the
2 premises. And we said -- and I said to my listeners, let's
3 respect their property rights, and we were on our way.

4 And then, given this disturbance, I had indicated at
5 some point that I wanted to try to go see if we could sit down
6 in a restaurant with me and my listeners, but after this, I
7 didn't think that that was going to be a particularly great
8 idea. And so I decided that we'd go straight to McIntire Park
9 to meet with the reporter from Vice News, Elle Reeve. And that
10 brings us to the next piece of evidence which I would like
11 to --

12 THE COURT: Let's take a recess right now.

13 MR. CANTWELL: Very good.

14 (**Jury out, 3:05 p.m.**)

15 (Recess.)

16 MS. KAPLAN: Your Honor, we have a couple of
17 scheduling matters that we think would be worth discussing, but
18 we can wait until the jury has been excused at the end of the
19 day.

20 THE COURT: Let me get to this matter of these two
21 plaintiffs' witnesses, Mr. Cantwell, you want to re-call. I
22 don't quite -- I read the letter. I mean, what would they be
23 testifying to that's not already in evidence or that anyone
24 else couldn't testify to?

25 MR. CANTWELL: There is a specific photograph that I

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1 want to get into evidence which I believe can be authenticated
2 by Mr. Willis or Ms. Romero. There is a video.

3 THE COURT: Well, can that be agreed to, the two
4 photographs?

5 MS. KAPLAN: I was going to suggest that, Your Honor,
6 if Mr. Cantwell wants to show us the photos, we would be happy,
7 if they can authenticate them, to stipulate to them.

8 MR. CANTWELL: All right. I guess I'll give this a
9 shot. I -- Mr. Bloch is aware of the photo that I'm talking
10 about. This has been discussed at some length already, but
11 I'll give it another shot. I'm happy to do that.

12 MS. KAPLAN: Well, Your Honor, there's no reason to
13 believe that, if they say they can't authenticate it to us,
14 they're going to somehow authenticate it on the stand. We're
15 officers of the Court. If they tell us they can authenticate,
16 we'll stipulate.

17 THE COURT: Will the witness authenticate the
18 photograph?

19 MS. KAPLAN: Yeah, I don't know. I have to show it
20 to them.

21 THE COURT: What does the photograph show?

22 MR. CANTWELL: The purpose of the photograph is that
23 there's someone standing in front of them with a firearm, a
24 woman by the name of Holly Zoller, and she's not a white
25 nationalist, and she's not a student at UVA, either. She's

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1 carrying a gun illegally on a campus, and she's with the
2 counter-protesters.

3 THE COURT: Was she asked about that at the time she
4 testified?

5 MR. CANTWELL: I'm sorry. Ms. Zoller has not
6 testified, Your Honor.

7 THE COURT: No, I mean the witness you want to call
8 back.

9 MR. CANTWELL: No. This is -- I did not have this
10 photograph at the time. So my data was -- I was not
11 reconnected with my data until Mr. Willis and Ms. Romero had
12 already testified.

13 THE COURT: What's the problem with the photograph
14 coming in?

15 MS. KAPLAN: There probably isn't. I don't think
16 they're going to be able to -- as I understand, it's blurry,
17 and I don't think they can agree that's a gun or a firearm.
18 But they can say that's a photo of Friday night, if that's what
19 he's talking about.

20 I think to bring them back to try to identify a
21 blurry supposed firearm, which I doubt, given their other
22 testimony, when they were asked to identify blurry things, they
23 said they couldn't -- I think it's highly unlikely, and it's
24 really a burden on them.

25 MR. CANTWELL: The goal is not to have them identify

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1 the firearm. It's to authenticate the scene so I can show the
2 firearm to the jury.

3 MS. KAPLAN: If that's all it is, Your Honor, I'm
4 pretty certain we'll be able to stipulate.

5 THE COURT: To stipulate?

6 MS. KAPLAN: Yes, that it's the scene on --

7 THE COURT: Then let's get that out of the way,
8 because if they're going to have to testify, I want to get them
9 down here so we can do it.

10 MS. KAPLAN: I'm happy to authenticate it. I think
11 we would probably be happy to authenticate that photo as being
12 from Friday night.

13 THE COURT: It just seems to me there's nothing in
14 their testimony that they need to be here.

15 MR. CANTWELL: So if I could give plaintiffs' counsel
16 a thumb drive.

17 THE COURT: All right. Is the jury ready?

18 Bring them on around.

19 MS. KAPLAN: Is this the photos?

20 MR. CANTWELL: That has all of my exhibits as of the
21 most recent edits.

22 MS. KAPLAN: And the exhibit numbers are?

23 MR. CANTWELL: There's three. I discussed with
24 Mr. Bloch on the phone, and now I'm discombobulated and I've
25 got to start over again.

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1 MS. KAPLAN: Mr. Cantwell can present them to us
2 after court, because I understand the jury is -- Mr. Cantwell
3 can tell us after court, because I understand -- the marshal
4 just told me the jury is on the way. And as soon as we get
5 them, we'll be happy to provide a stipulation.

6 THE COURT: All right.

7 (**Jury in, 3:26 p.m.**)

8 THE COURT: All right. You may be seated.

9 You may proceed, Mr. Cantwell.

10 MR. CANTWELL: Queueing this up.

11 Okay. This is pretty brief. I'm going to play for
12 you a clip from the Vice News interview that was not aired on
13 TV. I carried a personal voice recorder with me during these
14 events, as well as the body camera. And during the Vice News
15 interview I kept my own unedited recording of that, which I
16 later published on my website.

17 This is a very brief segment from that, which goes
18 from -- I have this in as CCEX-120, and it's from 24:51 to
19 25:43, which I'll edit into CCEX-120A and submit into evidence
20 and play for the jury.

21 (Defendant Cantwell Exhibit 120A marked.)

22 (Defendant Cantwell Exhibit 120A admitted.)

23 (Audio playing.)

24 MR. CANTWELL: "So, Mr. Cantwell, did you think it
25 was a good idea for you to get involved in violence at the

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1 Unite the Right?"

2 "Absolutely not."

3 So that interview went on for a while, but I
4 obviously won't trouble you with the entirety of it.

5 After the Vice News interview, I go back to my hotel;
6 I get the text message from Jason Kessler and the notification
7 from a gentleman named Kurt telling me about the so-called
8 leadership meeting at McIntire Park. I already played a clip
9 of that for you when we had Jason Kessler on the stand, and I
10 will briefly play a short portion of that same audio clip,
11 which is already in evidence as -- this is CCEX-10.

12 MS. KAPLAN: Just to clarify, Your Honor, if
13 Mr. Cantwell could clarify exactly what we're about to hear
14 and --

15 MR. CANTWELL: So this is the beginning of the body
16 camera video audio. I'm just using the audio because it's
17 already in evidence. Mr. Bloch was aware we've cut up some
18 clips, but before we had any agreement about that, I just
19 played the audio, because that was already disclosed.

20 This is from the very beginning of the meeting. It's
21 two minutes and 27 minutes long, and it just discusses
22 involving the police at UVA.

23 MS. KAPLAN: No objection, Your Honor.

24 THE COURT: Go ahead. Be admitted. Go ahead.

25 (Video playing.)

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1 MR. CANTWELL: That is the voice of Jason Kessler.

2 (Video playing.)

3 Now, some of you will recall that name, itsgoingdown.
4 I understand itsgoingdown.org to be a website that serves as a
5 clearinghouse for violent communist propaganda. Okay? So I,
6 on top of already feeling threatened because somebody tried to
7 frame me for a crime earlier that day, now I am being told that
8 this website that is notorious for broadcasting violent
9 communist propaganda is being made aware of our plans for the
10 evening, which was supposed to be secret, I remind you.

11 (Video playing.)

12 I'll stop it there just for the sake of time. You'll
13 recall that I tell Mr. Kessler that, if I'm going to involved,
14 I want the cops involved.

15 Subsequently during that meeting, I am informed by
16 Mr. Kline that he has spoken to the University of Virginia
17 police. And that interaction is captured in CCEX-161B, which I
18 would like to move into evidence and publish, show to the jury.

19 MS. KAPLAN: No objection.

20 THE COURT: Be admitted. You may.

21 (Defendant Cantwell Exhibit 161B marked.)

22 (Defendant Cantwell Exhibit 161B admitted.)

23 (Video playing.)

24 MR. CANTWELL: That is -- I know that to be the voice
25 of Eli Mosley -- Elliot Kline, a/k/a Eli Mosley.

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1 (Video playing.)

2 MR. CANTWELL: I will represent to you that this
3 video does not get more interesting in the next 28 seconds and
4 I'll stop it here.

5 CCEX-161C is a very brief clip of me getting
6 introduced to -- I don't think -- Rousseau is not a defendant
7 in this case, right? He is a defendant?

8 Okay. This is me being introduced for the first time
9 to my co-defendant Thomas Ryan Rousseau. Without objection
10 I'll move this into evidence and publish it and show it to the
11 jury.

12 THE COURT: Be admitted.

13 (Defendant Cantwell Exhibit 161C marked.)

14 (Defendant Cantwell Exhibit 161C admitted.)

15 (Video playing.)

16 MR. CANTWELL: "Tom from Vanguard," that's me getting
17 introduced to my co-defendant Thomas Ryan Rousseau for the
18 first time. Someone else says "Nick from Vanguard" and there's
19 a couple of other introductions here.

20 (Video playing.)

21 This is only a two-minute video, but I'm going to
22 skip ahead because there's something that I want to show you
23 image-wise, which is the black gentleman who is at the
24 leadership meeting of the Unite the Right rally, right there at
25 1:15. And I'll close this video out.

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1 After this meeting I went back to my hotel room and I
2 downloaded these videos from the body camera to my computer.
3 That's why we have these videos. When I cross-examined myself
4 before, you saw the videos of the body camera -- well, you saw
5 the videos of a woman grabbing my shirt.

6 The next time that I interact with my co-defendants
7 is at the University of Virginia. And that is captured -- the
8 moment that I arrive at the University of Virginia campus is
9 captured in a video which I have labeled CCEX-126, which I
10 would like to move into evidence, publish and show to the jury.

11 THE COURT: Okay. Be admitted.

12 (Defendant Cantwell Exhibit 126 marked.)

13 (Defendant Cantwell Exhibit 126 admitted.)

14 MR. CANTWELL: This video, you may notice there are
15 parts where you hear the words and then see the lips move
16 afterwards. This is a flaw in the video prior to my obtaining
17 it. This is a livestream video to the Periscope channel of one
18 Emily Gorcenski which I downloaded from the Internet in 2017.

19 (Video playing.)

20 That voice saying "Crowd around, crowd around, crowd
21 around," that man right there, I know him to be Elliot Kline,
22 a/k/a Eli Mosley.

23 And before we start this, I should ask myself a
24 couple of questions about the prior video, actually.

25 Mr. Cantwell, did Mr. Mosley tell you anything about

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1 attacking racial minorities or their supporters? No.

2 Okay. Let's move on to the next video of Mr. Mosley
3 giving instructions.

4 (Video playing.)

5 That hooting and hollering that you hear is at the
6 people who are lined up with the torches have just seen me
7 arrive over the hill at Nameless Field. I am arriving on the
8 scene right now.

9 MS. KAPLAN: So, Your Honor, I'm not trying to be
10 difficult, but there's no foundation for what he just put in.
11 He says he's just arriving now.

12 MR. CANTWELL: What you are about to see -- he's
13 going to repeat all these instructions. I'm just trying to
14 catch the moment prior to my arrival. The question that I
15 asked myself is not about --

16 THE COURT: Go ahead. Go ahead. Go ahead.

17 MS. KAPLAN: Withdrawn, Your Honor. I understand.

18 (Video playing.)

19 MR. CANTWELL: That's me.

20 (Video playing.)

21 MS. KAPLAN: Two comments, Your Honor. One, the
22 commentary of the person who is recording this is all hearsay
23 and I don't think is admissible for any purpose.

24 THE COURT: Sustained.

25 MS. KAPLAN: And two, there's no conceivable way that

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1 Mr. Cantwell was there the entire time. This was being filmed
2 by another person. Unless he was right next to her the entire
3 night, there's no foundation for it.

4 MR. CANTWELL: I am somewhere in this group of people
5 right here. This is filming me. And I take your point about
6 the hearsay commentary. There is an upcoming portion that I
7 would like to get to. If you like, I'll skip ahead.

8 THE COURT: Go ahead. Skip ahead.

9 (Video playing.)

10 MS. KAPLAN: Maybe the sound should be turned off.

11 MR. CANTWELL: I'll turn the sound off until I get to
12 the part that --

13 (Video playing.)

14 MR. CANTWELL: There's an interaction between myself
15 and the person recording which I'd like to show to the jury.

16 (Video playing.)

17 There I am.

18 (Video playing.)

19 MS. KAPLAN: Your Honor, again, the volume should not
20 be on. This is pure hearsay.

21 MR. CANTWELL: I'm interacting with the recorder
22 right now.

23 THE COURT: All right.

24 MR. CANTWELL: That's me in the camera frame as we
25 speak.

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1 THE COURT: Okay.

2 MR. CANTWELL: I'm just going to go back a few
3 seconds to capture the part we spoke over.

4 (Video playing.)

5 I take that to be a reference to the secret Walmart
6 meetup, which was infiltrated and somebody tried to frame me
7 for a crime. I felt threatened by this interaction.

8 (Video playing.)

9 In the interest of time, I'll stop the video here.
10 From there, we march off.

11 MS. KAPLAN: Your Honor, just move to strike all the
12 hearsay on that tape other than the exchanges with
13 Mr. Cantwell, which of course are not hearsay. But most of it
14 is.

15 THE COURT: Sustained. Your conversation is okay.

16 MR. CANTWELL: The instructions from Mr. Kline I
17 heard, they were something that I understood. And so that
18 portion I would seek to keep in.

19 THE COURT: All right.

20 MR. CANTWELL: If I recall correctly, CCEX-134 is
21 already in evidence in its entirety. Does that sound right to
22 everybody here?

23 MS. KAPLAN: Ms. Wheeler knows. I don't know if we
24 know.

25 THE CLERK: Video of August 11th, march on campus?

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1 MR. CANTWELL: Yes.

2 THE CLERK: It's in evidence.

3 MR. CANTWELL: So I am going to pull up CCEX-134 and
4 show it to the jury so that I can point myself out in a portion
5 of it.

6 (Video playing.)

7 I recognize this person in this video that -- the
8 person in all black here was at the Walmart meetup. He was one
9 of the people who was there. And it's difficult to see him in
10 this video, but I saw him wearing -- you can sort of tell he's
11 wearing all black here and he's wearing a black skull cap and
12 he's wearing sunglasses. And it's August 12th, 2017. It was
13 hot outside. That is a very conspicuous outfit for a man to be
14 wearing, even at night, especially with the sunglasses. That's
15 what I saw when I started coming down the stairs here.

16 (Video playing.)

17 This is me right here. It's difficult to see but
18 you'll be able to notice the logo on the back of my shirt as we
19 move forward. Right in front of me is the woman in the
20 sunglasses who I earlier showed you took my body camera.

21 THE CLERK: Do you have the time stamp for that,
22 Mr. Cantwell?

23 MR. CANTWELL: This is happening at 5:05 into
24 CCEX-134.

25 I thought it was suspicious that she was wearing a

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1 long-sleeve jacket, a hat pulled low and sunglasses, as did the
2 people behind the signs had their hats down low behind the
3 sign.

4 (Video playing.)

5 So I started to walk around. Now I'm back here. And
6 those two white lines on the black shirt, that is Radical
7 Agenda, that's the logo of the podcast.

8 (Video playing.)

9 This video jumps. That is not the result of my
10 editing. This is the video as I obtained it from the Internet.
11 Now you're about to see me come around here. I'll identify
12 myself when I appear.

13 (Video playing.)

14 Okay. I'm actually going to bring it back a little
15 bit and I'm going to tell you what you're looking for. Right
16 here you'll see a flashlight come out from behind people.
17 That's where I am.

18 (Video playing.)

19 That's my flashlight right there. You might have
20 been able to notice it, you might have not. It's not terribly
21 important for you to see, but I was just pointing at somebody.
22 The person I was pointing at was the man in the Adidas, black
23 and white Adidas shirt from the Walmart body cam footage. I
24 just saw him, and he yelled something at me about Walmart. I
25 said, are you the one who called in the false report? He

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1 responded to me in the affirmative.

2 (Video playing.)

3 That made me both angry and afraid. So not wanting
4 to get into a fight, I walked away. Those two white lines on
5 the black shirt are me walking away from that conflict.

6 (Video playing.)

7 That's me again, walking away rather than making an
8 effort to encircle these students, so-called.

9 MS. KAPLAN: Objection, Your Honor.

10 THE COURT: Don't add those comments.

11 MR. CANTWELL: You got it.

12 THE COURT: Disparaging comments.

13 MR. CANTWELL: All right.

14 (Video playing.)

15 MR. CANTWELL: Here I am. I'm looking over here
16 because I sense trouble.

17 (Video playing.)

18 You might have noticed, trouble just happened. If
19 you didn't notice, I'll go back and show you again.

20 (Video playing.)

21 That's at 6:09 that that scuffle breaks out.

22 (Video playing.)

23 The frame changes here and I'm not in this, but
24 that's when I run back over towards the statue.

25 The instructions that Mr. Kline gave us at the park

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1 and at Nameless Field were to keep the counter-protesters away
2 from the torches. If you recall the audio clip that I played
3 for you when I was speaking with Mr. Kessler about getting law
4 enforcement involved for the torch march, I said, "We need the
5 cops involved because if they attack us, we're going to fucking
6 hurt them." I don't want to hurt them, which is why I want law
7 enforcement there, to make sure that we don't get into a fight.
8 Somebody else says, "especially with torches" and we all -- all
9 right, it's kind of like our brand of humor, oh, fire and
10 fighting, that's kind of funny.

11 But you hear Mr. Kline tell us to keep the
12 counter-protesters away from the torches because we do not want
13 to create a fire hazard and set people on fire. And so when
14 this guy starts a conflict with me, I walk away from it. When
15 I see that there's a problem over by the torches, I go to get
16 between the problem and the torches. And that's when I get
17 into this thing that you have seen a couple of times.

18 This is -- I'm not sure if this is in evidence as
19 CCEX-138. I believe plaintiffs have the exact same video.
20 This is the Unicorn Riot video from August 11th evening.

21 THE CLERK: It's in evidence.

22 MR. CANTWELL: It is in evidence? Okay. And so with
23 that already in evidence, I'll pull it up and I would like to
24 publish it and show it to the jury.

25 THE COURT: You may.

C. Cantwell - Direct

1 (Video playing.)

2 MR. CANTWELL: You see me there. This is -- the
3 video -- this is edited video, okay, and it's edited by people
4 who don't have my best interests at heart. But I am now in the
5 crowd because I had seen that conflict break out. I'm keeping
6 my eye on who I believe the troublemakers to be.

7 (Video playing.)

8 I am going to put this into slow motion. I'll slow
9 this down three times. Now, you can see in this video who
10 exactly throws the first punch here. I'll just admit it's
11 obscured. It's my perception as I'm looking at this happen
12 that this man starts the fight, okay?

13 (Video playing.)

14 As this man is getting up, he's looking at me, and I
15 think that he's going to come towards me. And I also -- I
16 mistake him for the one -- so there's two guys with beards
17 here, all right? One of them, we've seen him in other images;
18 he has the blue short-sleeved shirt and the orange long-sleeved
19 shirt underneath it, and you can actually see that sleeve right
20 here. When the fight breaks out, this guy is involved in it,
21 and we can see him try to pepper-spray me later, but I think
22 that he is the other guy because I'm just looking at the
23 beards.

24 (Video playing.)

25 I come towards this guy. I've got my pepper spray

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1 out. He cocks his hand back. I let him have it.

2 (Video playing.)

3 I pull back.

4 (Video playing.)

5 This guy runs in with the tracksuit pants. I have no
6 idea who that guy is at the time that this is recorded.

7 (Video playing.)

8 The guy who goes down -- the guy who went in, he's
9 down. The guy with the orange long sleeves, that's his foot
10 kicking that guy in the head. I see that. I go in.

11 (Video playing.)

12 Now, I'm attempting to pepper-spray this guy, the one
13 with the long orange sleeves. But all these other people rush
14 in at the same time. They push my arm up.

15 (Video playing.)

16 My thumb goes up off the pepper spray because I'm not
17 trying to pepper-spray innocent people. I'm trying to pepper
18 spray the guy who's fighting.

19 (Video playing.)

20 I get my arm back down. I reach in, trying to get
21 the pepper spray closer to him.

22 (Video playing.)

23 But I'm out of pepper spray. These guys ain't.
24 They're letting the crowd have it.

25 (Video playing.)

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1 You heard me testify earlier that I beat the shit out
2 of Tom Massey. This is me punching Tom Massey, because Tom
3 Massey is in this pile of guys and Tom Massey is still
4 fighting, okay? I'm not beating the hell out of somebody
5 because this is how I get my enjoyment. The guy's still
6 fighting.

7 (Video playing.)

8 Here's the guy that I just pepper-sprayed. Keep an
9 eye on his hand. He's got pepper spray in his hand. He's
10 attempting to pepper-spray me right now.

11 (Video playing.)

12 Something goes wrong. He brings it back to look at
13 it.

14 (Video playing.)

15 Somebody out of frame pepper-sprays these people.

16 (Video playing.)

17 Now, this gets kind of hard to see, but this is
18 another angle of essentially the same thing going on. I'm in
19 there.

20 (Video playing.)

21 Again, this is the same guy with the orange sleeves
22 there. I'm not running around attacking people because that's
23 my idea of a good time. This is the guy who I saw fighting,
24 and he's fighting.

25 Here's the guy that I pepper-sprayed pointing his

C. Cantwell - Direct

1 pepper spray at me.

2 (Video playing.)

3 Another fellow pushes him off the statue.

4 (Video playing.)

5 You can see me right there.

6 Now, what's fascinating about this experience is when
7 we go through each video, you can see everything that happens.

8 It's sort of a complex project, and it's difficult for me to
9 show to you, but that's what I'm attempting to do right now,
10 that we go from that angle of the fight, where you could see me
11 pepper-spray the guy from the side profile, to up above you see
12 me coming around the statue, and now we go back to what I
13 showed you earlier, okay?

14 And I won't waste your time playing this 100 times,
15 but I'll show you the video again where the woman grabs my
16 camera.

17 You see I'm coming around the statue, and that's
18 where it picks right up right there. It goes from one frame to
19 the other. I pepper-spray that guy who was in the fight with
20 the guy with the orange sleeves. The guy with the orange
21 sleeves kicks somebody in the head. I try to pepper-spray him.
22 My can is out. He jumps into a pile. I hit that guy. As I'm
23 coming around, I'm hitting the same guy. He's still fighting.

24 For the purpose of continuity here, we'll go to --
25 CCEX-132A is already in evidence. I'd like to publish it and

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1 show it to the jury again.

2 (Video playing.)

3 And this is still in slow motion, okay? This person
4 right here is the same person who just said to me, "Hey, Chris,
5 how was your Walmart meetup?" Okay. This is a transgender
6 person. I have no interest in causing this person any harm.
7 If this was the type of thing they're making it out to be, this
8 person would not be safe walking around in this crowd.

9 (Video playing.)

10 I'm sure you're all familiar with me by now. Look at
11 her playing with her phone.

12 (Video playing.)

13 I go to get the stick.

14 (Video playing.)

15 "Mace, mace, mace." She grabs the collar of my
16 shirt. My body camera goes missing.

17 Go to 135A, CCEX-135A, already in evidence.

18 Let's put this back into slow motion three times.
19 CCEX-135A, from Getty Images.

20 (Video playing.)

21 Here's the guy I pepper-sprayed before. Here's the
22 baton.

23 (Video playing.)

24 There's the guy with the orange sleeves that I was
25 fighting before.

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1 (Video playing.)

2 Do you see her trying to bring that baton down? This
3 guy right behind that torch, he's spraying pepper spray.

4 (Video playing.)

5 That's the guy I just pepper-sprayed. So he's
6 putting him in a headlock and he's deploying pepper spray as we
7 speak.

8 (Video playing.)

9 I get pepper-sprayed.

10 (Video playing.)

11 I hope you can hear the urgency in my voice of "get
12 that fucking stick," because when I'm watching her bring that
13 thing down on people -- that's a metal rod and she's bringing
14 it down like this. She's trying to brain guys with this thing.
15 I thought people's lives were in danger.

16 (Video playing.)

17 "Take that shit from her. Get that fucking stick."

18 I'm going to play a very brief clip from Plaintiffs'
19 Exhibit 2103. This is just me getting treated for getting
20 sprayed for pepper spray in the Vice video. I have this as
21 CCEX-166A.

22 I can -- if you'd like, I can mute it and show it to
23 you guys before I publish it to the jury. It's very brief and
24 just getting treated for pepper spray. It cuts in and out a
25 little bit.

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1 (Defendant Cantwell Exhibit 166A marked.)

2 THE CLERK: Is this going to be admitted?

3 MR. CANTWELL: I've got the volume off so you guys
4 can see it. Can I -- is this okay? Okay.

5 MS. KAPLAN: We don't have any objection.

6 THE COURT: Go ahead.

7 MR. CANTWELL: CCEX-166A is a clip from Plaintiffs'
8 Exhibit 2103. I'd like to publish it and show to it the jury
9 and move it into evidence.

10 THE COURT: You may.

11 (Defendant Cantwell Exhibit 166A admitted.)

12 (Video playing.)

13 MR. CANTWELL: That's me.

14 (Video playing.)

15 I couldn't partake in any celebration that took place
16 afterwards. That's more or less the evening of August 11th for
17 me.

18 I'll bring up CCEX-018. That's my text messages.
19 Plaintiffs have an actually better exhibit, but I just need to
20 show one thing, in any case.

21 What is plaintiffs' exhibit with my produced text
22 messages?

23 MR. BLOCH: 3317.

24 MR. CANTWELL: 3317? Okay. Let me pull that one up,
25 actually.

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1 As it turns out, my first text message ever with Eli
2 Mosley, apparently, is, "What number should I call to speak
3 with the police about tonight?" That was sent at 1:10 a.m. on
4 August 12th. And then two minutes later he replies, "I'm
5 trying to figure out which PD is handling still. I'll let you
6 know." And I reply, "Thanks."

7 I guess this answers another question that we had
8 earlier. I wasn't sure -- during earlier questioning I wasn't
9 sure what time I got to McIntire Park, and I just found out
10 that I woke up at 10:17 a.m. for the sake of the record on
11 that.

12 So after this thing, I go back to my hotel room. I
13 text Eli Mosley. I say, hey, you know, which law enforcement
14 agency should I speak to about the fight tonight? And he says,
15 I'll get back to you. And then the next thing I know, it's
16 August 12th. And August 12th was kind of a short day for me.

17 On August 12th, I got pepper-sprayed pretty early.

18 I would move to admit CCEX-006 into evidence, publish
19 it, and show it to the jury. This is one of two videos of me
20 being pepper-sprayed on my way to what was Lee Park on the
21 morning of August 12th.

22 THE COURT: All right. Be admitted. Go ahead.

23 (Defendant Cantwell Exhibit 006 marked.)

24 (Defendant Cantwell Exhibit 006 admitted.)

25 MR. CANTWELL: So there's two videos that I'm going

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1 to show you. This one was taken by a man who was walking
2 behind me. All right?

3 To give you the orientation, this is -- if I'm
4 walking down Market Street towards Emancipation Park and the
5 library is on my right -- right? Does that sound -- okay. So
6 I'm walking down Market Street towards Emancipation Park. The
7 library is on my right, and this is what you're about to see
8 from the man who's walking behind me.

9 (Video playing.)

10 You may recall the logo from my shirt there.

11 (Video playing.)

12 That happened pretty quick. So let's go in slow
13 motion again.

14 (Video playing.)

15 Recall that in 2017 it was unusual to wear masks in
16 public. Hopefully you remember that Adidas shirt from the
17 Walmart video, like I asked you to earlier, and you can see
18 that that man's hand appears to be pressing a button.

19 And that's the can of pepper spray that's getting
20 unloaded into my eyes.

21 (Video playing.)

22 I'm going to show you that from another angle, which
23 is CCEX-007. Having been deprived of my body camera earlier --
24 oh.

25 I move to admit CCEX-007 into evidence and publish it

C. Cantwell - Direct

1 and show to it the jury.

2 THE COURT: Admitted. You may publish.

3 (Defendant Cantwell Exhibit 007 marked.)

4 (Defendant Cantwell Exhibit 007 admitted.)

5 MR. CANTWELL: Having been deprived of my body camera
6 the prior evening, I brought a handheld camera, a Kodak. I
7 think the model name was PlayFull. It was a handheld HD camera
8 that I was holding as I walked towards the park because, again,
9 I thought it was important to collect evidence, because we were
10 in danger.

11 So same scene, but this time it's me holding the
12 camera.

13 (Video playing.)

14 I'm going to again put that in slow motion so we can
15 catch how sneaky this was. This was completely -- I never saw
16 this coming.

17 This guy comes up out of the crowd.

18 (Video playing.)

19 That's the guy right there that's about to
20 pepper-spray me. He's behind these people. He walks forward.
21 He sees me coming.

22 (Video playing.)

23 MS. KAPLAN: Your Honor, I'm no video technician, but
24 I assume given the way they're speaking this is going at
25 half-speed.

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1 MR. CANTWELL: Yeah, this is going in slow motion.

2 That was the idea.

3 So we can see, right behind that other person, that
4 the can of pepper spray is produced.

5 (Video playing.)

6 You see the Adidas logo.

7 (Video playing.)

8 Ladies and gentlemen, that is every bit as painful as
9 it sounds.

10 I would now like to show you a video of me receiving
11 first aid in the park. This is CCEX-009. This takes place
12 pretty much immediately after I've been pepper-sprayed.

13 THE COURT: Are you waiting on me?

14 MR. CANTWELL: No. No. I'm waiting for the video to
15 come up. But while you mention it, I should have probably said
16 the magic words.

17 I would like to admit CCEX-009 into evidence and
18 publish it and show it to the jury.

19 THE COURT: All right.

20 (Defendant Cantwell Exhibit 009 marked.)

21 (Defendant Cantwell Exhibit 009 admitted.)

22 MR. CANTWELL: Okay.

23 (Video playing.)

24 If you didn't hear that -- I'd like you to -- I asked
25 this man, "Are we surrounded right now?" Because I'm

C. Cantwell - Direct

1 terrified, because I can't see.

2 (Video playing.)

3 Now, if you didn't catch that, I'd like you to.

4 These guys say, "We're going to kill them. We're going to
5 fucking kill them." And my response is, "Don't fucking kill
6 anybody. You're going to make it worse."

7 (Video playing.)

8 That's the last thing I thought, that -- was that
9 anybody dying was going to improve our station.

10 (Reporter clarification.)

11 MR. CANTWELL: The last thing I thought was that
12 anybody dying was going to improve our station any.

13 Finally, I'll play -- this is a different image of me
14 getting treated for my pepper spray injury. This is CCEX-166B.
15 It's another clip from Plaintiffs' Exhibit 2103. It's just a
16 clip from the Vice thing of me getting treated for pepper spray
17 and the reporter asked me who pepper-sprayed me.

18 If there is no objection, I would like to move
19 CCEX-166B into evidence and publish it and show it to the jury.

20 THE COURT: Be admitted.

21 (Defendant Cantwell Exhibit 166B marked.)

22 (Defendant Cantwell Exhibit 166B admitted.)

23 (Video playing.)

24 MR. CANTWELL: That's more or less my day on August
25 12th. You saw the plaintiffs play for you a clip from that

C. Cantwell - Direct

1 same Vice News piece where I'm walking down the street with no
2 shirt on, and surprisingly enough, I appear to be sort of
3 unhappy because I've just been pepper-sprayed twice in two days
4 after going through substantial effort to make sure that
5 nothing like that happened.

6 And so if you'll pardon my language, I didn't feel
7 very fucking good about it.

8 That's all I have. Thank you.

9 THE COURT: All right. Mr. Cantwell will take the
10 stand for any cross-examination.

11 MR. CANTWELL: Can I put this back over at my station
12 over there real quick?

13 THE COURT: You may.

14 CROSS-EXAMINATION

15 BY MR. BLOCH:

16 Q Mr. Cantwell, just a few questions. I want to start with
17 the clip you played of the leadership meeting. Okay?

18 A Yeah.

19 Q You showed a clip of Elliot Kline talking about having
20 called UVA police before the torch march, right?

21 A Yes.

22 Q And this was from the video we talked about yesterday
23 where you announced to everybody at the beginning that you were
24 recording, right?

25 A Yes.

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1 Q And we saw Mr. Kline -- Mr. Kline is standing right in
2 front of you, right?

3 A Yes.

4 Q And your body cam is right on your chest, right?

5 A It is.

6 Q He says something about they're going to have -- they're
7 going to send almost all of their police officers they have on
8 duty and getting some from overtime to join you at the torch
9 march, right?

10 A Yes, that's what Mr. Kline told me.

11 Q Right. And then you went to Nameless Field for the
12 beginning of the torch march, right?

13 A Yes.

14 Q And there in fact were not any police there at all, right?

15 A That was the case.

16 Q And there were not any police there at all for the torch
17 march, right?

18 A No, not along the path. I saw police later.

19 Q So your testimony is that somebody called the UVA police,
20 told them that there was going to be a torch march of 500 white
21 nationalists on their campus marching through and not a single
22 police officer actually showed up, right?

23 A My testimony is that Mr. Kline told me that. And if
24 Mr. Kline lied to me, I wouldn't be the first guy he lied to.

25 Q Now, when you saw no police at the -- at Nameless Field,

C. Cantwell - Direct

1 you didn't call police, right?

2 A No.

3 Q You just kept marching, right?

4 A Yeah.

5 Q If we could show one additional clip from that video. I'd
6 like to show -- I assume you have no objection to CCEX-153G.

7 This is a clip from 1:26:55 to 1:27:28.

8 A I'm sorry, what is this?

9 Q This is a 30-second clip from the leadership meeting
10 video.

11 A I think I am going to object to this. I'm anticipating
12 what this is. So perhaps we should sidebar.

13 Q I'll move on. I'll come back to it.

14 Turning to the torch march, the fight at the statue
15 itself, you gave testimony that you were in fact defending
16 yourself and others, correct?

17 A Yes.

18 Q You agree with me that you in fact pled guilty to two
19 counts of assault and battery for what you did that night?

20 A I did.

21 Q If I could show and introduce PX-3880.

22 Did you post this on social media, Mr. Cantwell?

23 A I did.

24 THE CLERK: Was it admitted?

25 MR. BLOCH: I'd like to admit it and publish it,

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1 please.

2 MR. CANTWELL: Yes. No objection.

3 THE COURT: Be admitted.

4 (Plaintiff Exhibit 3880 marked.)

5 (Plaintiff Exhibit 3880 admitted.)

6 BY MR. BLOCH:

7 Q So Mr. Cantwell, just showing the jury, you posted this
8 photograph on social media on your Minds account on August
9 20th, 2017. You said, "I hope to see you all soon. If not,
10 it's been a great privilege to serve alongside you all," right?

11 A Yes.

12 Q Now, turning to the -- we can take that down.

13 A Can you tell me what exhibit that is, please?

14 Q This is PX-3880.

15 A 3880.

16 Q You played a clip of eight minutes from a Radical Agenda
17 episode from August 7th where you had Jason Kessler on the
18 show, correct?

19 A Yes.

20 Q I would just like to play two additional clips that you
21 did not play. Could we show -- or move into evidence PX-3956C,
22 please, and play it for the jury.

23 THE COURT: Yes, go ahead.

24 (Plaintiff Exhibit 3956C marked.)

25 (Plaintiff Exhibit 3956C admitted.)

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1 MR. BLOCH: Thank you, Judge.

2 (Audio playing.)

3 BY MR. BLOCH:

4 Q Did you also say that, Mr. Cantwell, on that Radical
5 Agenda episode with Jason Kessler?

6 A Yes, I said that.

7 Q And if we could play PX-3956A, just the first sentence.

8 THE COURT: Go ahead.

9 MR. BLOCH: Thank you, Judge.

10 (Plaintiff Exhibit PX-3956A marked.)

11 (Plaintiff Exhibit PX-3956A admitted.)

12 (Audio playing.)

13 BY MR. BLOCH:

14 Q That's how you ended the show, right, with Mr. Kessler?

15 A Was that the end of the show?

16 Q My question is did you say that on that show?

17 A I said that on that show, yeah.

18 Q Now, you also made mention of a blog post. You showed the
19 jury a blog post that you did in the days leading up to
20 Charlottesville, correct?

21 A Yes.

22 Q And if we could just show, I believe it was CCEX-24.

23 A I think CCEX-24A was the one with the redactions.

24 (Defendant Cantwell Exhibit CCEX-24 marked.)

25 MR. BLOCH: 24A is fine. Do you have 24? We'll do

C. Cantwell - Direct

1 24. I'm not showing a part that should be redacted.

2 THE WITNESS: Okay.

3 MR. BLOCH: If you could scroll down, Mr. Spalding,
4 to -- scroll down. There's a portion that says something about
5 the ideas that we entertain on Radical Agenda. Maybe go again.
6 Try one more. Sorry, if you go back up.

7 BY MR. BLOCH:

8 Q Okay. So if you look at the second paragraph from the
9 bottom, and what you say here is -- this is the blog post that
10 you showed the jury earlier that you posted on August 7th,
11 right?

12 A Yes.

13 Q And what you say is, "Whatever violent ideas we entertain
14 on the Radical Agenda are not to be carried out here," right?

15 A Yes.

16 Q Now, the words "violent ideas we entertain on the Radical
17 Agenda," that's actually a link, right?

18 A Yes, that's a link to episode 318 of the Radical Agenda,
19 I'm fairly confident.

20 Q Well, it's a link to the episode we talked about the other
21 day when you testified called "Political Violence," right?

22 A Yes.

23 Q If we could show PX-2610.

24 That's the episode that you linked to, right?

25 A Yes.

C. Cantwell - Direct

1 Q And that's the one we played for the jury -- that I played
2 for the jury about how you want to be prepared -- you want
3 people to be prepared to go out and hurt people, right?

4 A Yes.

5 MR. BLOCH: We can take that down.

6 BY MR. BLOCH:

7 Q Now, you showed the jury the footage from your handheld
8 camera on August 12th as well, right?

9 A Yes.

10 Q And you showed a second video that captures essentially
11 the exact same scene, right?

12 A Yes.

13 Q So you had another camera you say you took on August 12th,
14 right?

15 A Yes.

16 Q And what you showed -- the handheld camera I'm talking
17 about. And what you showed the jury is about a minute and ten
18 seconds of footage from that camera, right?

19 A Yes.

20 Q And it shows you getting maced, right?

21 A Yes.

22 Q And then according to you, that camera also disappeared,
23 right?

24 A The video was sent to my attorney while I was
25 incarcerated.

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1 Q Well, so the camera itself you were carrying in your hand,
2 right?

3 A Yeah.

4 Q And somehow you lost it that day, right?

5 A Yeah. I was being treated for the pepper spray.

6 Q But -- you say it was while you were getting treated for
7 the pepper spray?

8 A Yeah. So I was on the ground screaming in pain and I lost
9 track of my camera.

10 Q But somehow you got it back, you say, right?

11 A Yeah. Somebody sent it to my lawyer. Somebody who was in
12 the park sent it to my lawyer while I was in jail.

13 Q Isn't it true, Mr. Cantwell, you actually don't have any
14 idea how you got it back?

15 THE COURT: Well, what difference does it make?

16 BY MR. BLOCH:

17 Q Well, according to you, you just got it back at some
18 point, but you don't know how and you don't know when.

19 THE COURT: That's not -- let's move on.

20 BY MR. BLOCH:

21 Q And the only footage that was on it was that minute and
22 ten seconds of you getting maced, right?

23 A No. There was a longer video that led up to that. This
24 is a clip -- this was produced during my criminal defense
25 investigation. That's what that clip is.

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1 MR. BLOCH: Your Honor, the only question I have left
2 is the 30-second clip.

3 THE COURT: Well, play it.

4 MR. BLOCH: Can I have one moment, Judge, to confer
5 with my co-counsel?

6 THE COURT: Mr. Smith, are you there?

7 Yes, go ahead.

8 Mr. Smith, if he wants to question, tell him it's
9 now.

10 MR. SMITH: Yes, I'm here, Your Honor.

11 THE COURT: All right. Stand by. Stand by.

12 MR. SMITH: Sure.

13 THE COURT: All right. Do you have a question?

14 MS. KAPLAN: Could we have a quick sidebar, Your
15 Honor?

16 THE COURT: Okay.

17 (Sidebar commenced.)

18 MR. BLOCH: The video that I would like to play, I'm
19 not sure Mr. Cantwell will have an objection to it. It's not
20 what you think it is. It's the one of Kline talking to
21 Azzmador about an hour and three minutes in. There's a
22 30-second conversation where he says, "Be here at 5 and bring
23 your fighters."

24 THE COURT: Is he in it?

25 MR. BLOCH: He's taking it.

C. Cantwell - Direct

1 MR. CANTWELL: Yeah, it's my body camera video.

2 I have the same problem with it, though. And so the
3 thing is, I don't -- it doesn't matter to me. And so I'm
4 inclined to let it go. But I don't want to see the argument
5 for you to go do the other thing. Does that make sense?

6 MR. BLOCH: See the argument what?

7 MR. CANTWELL: I don't want to see the argument for
8 truck of peace.

9 MR. BLOCH: I won't play truck of peace or talk about
10 truck of peace.

11 MR. CANTWELL: Okay. You just want to play the
12 Azzmador or Kline thing?

13 MR. BLOCH: Yeah.

14 MR. CANTWELL: That's fine with me.

15 THE COURT: Okay. Let's go.

16 MR. CANTWELL: If you want to do that, then I want to
17 bring in the final clip, which is the -- after we get the
18 announcement of the injunction, the plan that happens after
19 that, okay?

20 MS. KAPLAN: Whatever he wants to do has got to be
21 responsive to something you do on cross.

22 MR. BLOCH: I don't believe it's responsive.

23 MR. CANTWELL: So the thing is, what you're trying to
24 bring in is something that -- is a plan that got discarded,
25 okay?

C. Cantwell - Direct

1 MR. BLOCH: No, it's different. This isn't the plan.

2 MR. CANTWELL: I understand that you're bringing up
3 something different. When Eli is speaking to Azzmador and
4 saying you have to have your fighters here by 5 o'clock, or
5 something like that, that plan goes completely out the window
6 when we get the injunction.

7 MR. BLOCH: I don't think that's right.

8 MR. CANTWELL: We are told -- you know what? I --

9 THE COURT: Well, is it impeaching him?

10 MS. KAPLAN: No. It has nothing to do with him.

11 THE COURT: Hasn't this been in existence before?

12 MS. KAPLAN: Yeah, but this video came in through --
13 this is a video that he recorded that came in through his
14 direct.

15 THE COURT: Well, it's not -- every other video is
16 not coming in just because somebody played part of it.

17 MR. BLOCH: No. He just played a portion of the
18 video, and I think this sort of casts a different tone from
19 what he just played.

20 MR. CANTWELL: And I would argue differently.

21 THE COURT: Okay. Play it. It's admissible.

22 MR. BLOCH: Are you putting anything else in if I
23 play it?

24 THE COURT: No. That doesn't -- everything -- all
25 the evidence stands on its own.

C. Cantwell - Direct

1 (Sidebar concluded.)

2 THE COURT: All right.

3 BY MR. BLOCH:

4 Q If I could just play CCEX-153G. And just -- this is also
5 from the leadership meeting, isn't that right, Mr. Cantwell?

6 A It is.

7 Q And to set this up, this is Elliot Kline, right?

8 A Yes.

9 Q And this is Robert Azzmador Ray, correct?

10 A Yes.

11 THE CLERK: Mr. Bloch, I don't mean to beat a dead
12 horse, but you're going to move for the admission?

13 MR. BLOCH: I'm sorry. I move to move this into
14 evidence and ask that it be published.

15 THE COURT: Go ahead.

16 (Defendant Cantwell Exhibit 153G marked.)

17 (Defendant Cantwell Exhibit 153G admitted.)

18 (Video playing.)

19 BY MR. BLOCH:

20 Q Mr. Cantwell, does Elliot Kline say "anyone who is a
21 fighter needs to be here at 5 a.m."?

22 A That's what he says in that video.

23 MR. BLOCH: I have nothing further.

24 THE COURT: Okay. Thank you. Mr. Smith?

25 THE WITNESS: Now, I actually have I guess redirect

C. Cantwell - Direct

1 or a response to what we just went through there.

2 THE COURT: Okay. Go ahead.

3 MR. CANTWELL: That plan changed substantially after
4 that conversation takes place. There was an initial plan that
5 we were going to be able to get our vehicles up to the park and
6 people were going to be able to get right out and we weren't
7 going to have the sort of problems that we ended up having.

8 That problem was -- that plan went out the window
9 when there was some deliberation about the permit. After that
10 clip, our permit was intact, we were informed that we would be
11 able to get -- or I was informed by Mr. Kline that we were
12 going to be able to get the vehicles up and we weren't going to
13 have any of these problems.

14 Whether Mr. Kline was informed about that or not
15 is -- you know, he's not here to testify, but that's what
16 Mr. Kline told me after that. And of course we were not able
17 to get our vehicles up. And so all the troubles that we
18 witnessed unfold the next day nonetheless unfolded.

19 THE COURT: Okay. Mr. Smith?

20 MR. SMITH: Yes, Your Honor.

21 THE COURT: Ask your questions.

22 MR. SMITH: Yes, thank you. Mr. Cantwell, can you
23 hear me okay?

24 THE WITNESS: I hear you fine.

25 CROSS-EXAMINATION

C. Cantwell - Direct

1 BY MR. SMITH:

2 Q Okay. So this leadership meeting, the one that you
3 recorded, was either David Matthew Parrott, Matthew Heimbach or
4 any member of Trad Worker present for that?

5 A I do not recall any presence of Matthew Heimbach or
6 Matthew Parrott. And I believe that I would if they were
7 there. I have no way of knowing if a member of TWP was there.

8 MR. SMITH: Okay. Thank you. No further questions,
9 Judge.

10 THE COURT: Okay. Is that all?

11 All right. Thank you.

12 MR. JONES: I have a brief question, Your Honor. It
13 can wait until tomorrow.

14 THE COURT: I don't want to wait. If you've got one
15 question, don't wait.

16 MR. JONES: Okay.

17 CROSS-EXAMINATION

18 BY MR. JONES:

19 Q Mr. Cantwell, I am pulling up what's been previously
20 admitted as PX-3239.

21 A Okay.

22 Q Can you see it on your screen yet?

23 A Not yet.

24 MR. JONES: Ask that it be shown to the witness and
25 also published to the jury.

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1 THE COURT: Is this a video?

2 MR. JONES: I'm just going to show him a quick clip
3 and ask that one question.

4 (Video playing.)

5 BY MR. JONES:

6 Q Mr. Cantwell, do you recognize this, what this video
7 depicts?

8 A I do, sir.

9 Q Now, you testified that you were maced; is that right?

10 A I was.

11 Q And that was when you were walking along that sidewalk
12 right there, isn't it?

13 A Yes. That's exactly where I was.

14 MR. JONES: That's all the questions I have. Thank
15 you.

16 THE COURT: Okay. Thank you. Members of the jury,
17 I'm going to excuse you now until 9 o'clock tomorrow morning.
18 I understand that we only have two short witnesses tomorrow.
19 Then we're going to another phase of the trial where I will
20 instruct you on the law, and then closing arguments, and then
21 you will deliberate.

22 So we're coming toward the end, but not -- it's not
23 going to end tomorrow or Thursday. We'll be here at least
24 through Friday, I'm sure. But anyway, we're coming toward the
25 end.

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1 So you're excused now. Do not discuss the case with
2 anyone or allow anyone to discuss it with you. Do not remain
3 within hearing of anyone discussing it. Thank you.

4 **(Jury out, 5:01 p.m.)**

5 MS. KAPLAN: Your Honor, a couple housekeeping
6 things.

7 THE COURT: Okay. We'll take that up.

8 MS. KAPLAN: So number one, Your Honor, I'm pleased
9 to say that believe it or not, we've reached a stipulation with
10 Mr. Smith with respect to a certain document that we will work
11 out the details of which and inform Your Honor tomorrow. That
12 means, I understand, that neither Mr. Parrott nor Mr. Heimbach
13 will take the stand. So it should only be those two witnesses
14 tomorrow.

15 We would recommend, Your Honor -- obviously Your
16 Honor is the boss, but one thing we thought is if tomorrow ends
17 early, maybe the afternoon could be spent in some kind of a
18 charging conference if Your Honor is amenable to that.

19 THE COURT: I don't take that much time. You're
20 going to have a set of instructions either late tonight or
21 tomorrow morning. I'm going to give you an opportunity to
22 argue about it, but I don't take like an afternoon or anything.

23 MS. KAPLAN: So Your Honor, we propose then -- we'll
24 try to get you some proposals for charges tonight for sure.

25 THE COURT: You've sent in things, both sides, and

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1 we've been working on it.

2 MS. KAPLAN: Okay, Your Honor. The only other thing
3 I said is I had a conversation with Mr. Campbell and
4 Mr. Kolenich about closings. I think the parties are generally
5 amenable to doing half a day each side, and our hope would be
6 to do that on Thursday, Your Honor.

7 THE COURT: All right. Well, if we can start
8 tomorrow, that would be -- I don't think the jury can finish
9 this case in a day, to deliberate. I think we've got to use
10 that time.

11 MS. KAPLAN: It's 5 o'clock, Your Honor. And I have
12 to -- I need some time to prepare a closing. I'd really
13 appreciate if we could do it Thursday.

14 MR. KOLENICH: We're in agreement with that, Judge.

15 MS. KAPLAN: I don't think anyone wants to have to
16 pull an all-nighter.

17 THE COURT: I'm trying to get this case over with in
18 the week. I don't want to waste the jury's time. They don't
19 want to come back and be here until Thanksgiving, I know.

20 MS. KAPLAN: Understood. We think that the jury will
21 probably -- Friday will be enough time, Your Honor, for them to
22 reach a --

23 THE COURT: I've seen this verdict form. I don't
24 know how on earth they'd get through that. They're going to
25 have --

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1 MS. KAPLAN: We can talk to -- that's the agreement
2 that we reached with defendants.

3 THE COURT: You have a 23-day trial and only...

4 MR. KOLENICH: Your Honor, the only thing I would add
5 is we have Rule 50s we've got to put in and maybe some
6 supplemental jury requests.

7 THE COURT: All right. Let's move on and see what we
8 can do.

9 MR. KOLENICH: It's going to be difficult for us to
10 close if they close Wednesday and all of a sudden I've got to
11 get up.

12 THE COURT: All right.

13 MS. KAPLAN: We definitely wouldn't take up the whole
14 day Wednesday. I think it's going to present a problem for you
15 guys too.

16 THE COURT: Well, let's move on.

17 MS. KAPLAN: That's all I have, Your Honor.

18 MR. SPENCER: Would you mind if I just get a little
19 bit of clarity here because I'm a layman. So the way things
20 are tending is that you would present your summation on perhaps
21 Wednesday afternoon?

22 MS. KAPLAN: No, I think if -- to be clear, if the
23 judge decides to do it tomorrow, I think both sides -- you will
24 start and not finish tomorrow and we would finish tomorrow,
25 because as I understand, the two witnesses that are left will

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1 take very little time. We could be done with them by 10.

2 MR. JONES: We should be done well before ten even
3 with the witnesses.

4 MS. KAPLAN: So I think the defendants would have to
5 do most if not all of their closings as well tomorrow. That's
6 why --

7 MR. SPENCER: We're going to do closing arguments
8 tomorrow afternoon? Is that what you're saying?

9 THE COURT: No.

10 MR. SPENCER: Okay.

11 THE COURT: I mean, I'm saying if we can finish --
12 I've got to instruct the jury.

13 MR. SPENCER: Right.

14 THE COURT: And after I instruct the jury, I hate to
15 not use that time.

16 MR. SPENCER: I'm sorry if I'm annoying anyone. I
17 just simply -- if I just know what I need to prepare for, I can
18 just focus and get it done. So if you just give me a --

19 THE COURT: Well, start preparing. The case, you've
20 heard all the evidence, probably.

21 MR. SPENCER: That's true, but I really like to know
22 what's happening so that I can get my mind --

23 THE COURT: Well, I know, but we've got 50 people or
24 so waiting.

25 MR. SPENCER: I am one of them.

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1 THE COURT: I know, but they're not going to all
2 stand by waiting for you.

3 MR. SPENCER: I'm not asking them to. I'm simply
4 asking to give me a good window. I want to get home for
5 Thanksgiving as much as everyone here, for my kids.

6 THE COURT: I don't want the jury to rush through
7 this verdict thing and try to get through on Friday. I mean,
8 that's what -- I mean, I'd be happy --

9 MR. SPENCER: All I'm asking is a little bit.

10 THE COURT: That's the thing. I think the jury is
11 going to be tired and want to get out of here and I think all
12 of you want the jury to give as much time to the verdict as
13 they need. And I just think it's going to take a lot of time.
14 So --

15 MR. SPENCER: So should I prepare my summation for
16 tomorrow afternoon?

17 THE COURT: No. I mean, they're going to go first.

18 MR. SPENCER: I know.

19 THE COURT: And they're not likely -- even if they go
20 at all, they're not likely to get to you.

21 MR. SPENCER: So I'm thinking Thursday.

22 THE COURT: Well, think Thursday. I would.

23 MR. SPENCER: That's what I -- thanks.

24 MS. KAPLAN: Your Honor, if we were to make ours
25 shorter, would that allow us to start Thursday morning? We

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1 could cut it to two hours. It's just going to be -- there's
2 three weeks of testimony. I can't -- I've got a night, Your
3 Honor. I mean, I'm a very efficient worker, but I have to tell
4 you, I'm not that efficient.

5 THE COURT: I mean, you know, I mean, look, I can
6 come back Monday. It's not a problem to me. But I don't like
7 to have an unhappy jury.

8 MS. KAPLAN: Understood, Your Honor. Understood.
9 We'd just like to give this the attention it deserves on the
10 closing. And starting at 5 o'clock tonight to go tomorrow,
11 that only gives me between now and 9 a.m. tomorrow, which is
12 not a lot of time.

13 THE COURT: All right.

14 MS. KAPLAN: I'm very fast, but I'm not that fast,
15 Your Honor.

16 THE COURT: I thought this case should have your
17 closing argument already in your head for the last three years.

18 MS. KAPLAN: There's a lot of testimony that's come
19 in, Your Honor. We obviously want to point to the evidence.

20 THE COURT: Okay.

21 MS. KAPLAN: Thank you, Your Honor. My heart just
22 stopped beating out of my chest. I appreciate that, Your
23 Honor. Thank you.

24 THE COURT: Okay.

25 Could you take about three hours a side?

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1 MS. KAPLAN: That's what I'm thinking.

2 THE COURT: That's about all we'd get in anyway. I'd
3 like to let the jury at least get together and select a
4 foreman.

5 MS. KAPLAN: That's what we agreed with, actually,
6 with Mr. Cantwell and Kolenich. That was our proposal. If you
7 wanted to cut it by half an hour or something, we could do that
8 as well.

9 THE COURT: Is everybody on the defense side --

10 MR. CAMPBELL: To be fair, Judge, we didn't clear it
11 with everyone else. We did kind of get time estimates that
12 made it seem feasible, but no one else has agreed to it that
13 I'm aware of.

14 MR. JONES: I think if plaintiffs were willing to
15 maybe shave off another -- make it two and a half hours, that
16 would be, with five of us, four or us, however many --

17 MR. CANTWELL: I'm sorry. Is the deliberation now
18 three hours for the plaintiffs and three hours for the defense
19 in total?

20 THE COURT: How many closing arguments do we have?

21 THE CLERK: I believe Mr. Smith and Mr. ReBrook would
22 be two more.

23 MS. KAPLAN: I tell you what, Your Honor.

24 THE COURT: Mr. Smith will be here, but Mr. ReBrook,
25 I don't know.

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1 MR. CANTWELL: I would just like to point out, I
2 don't think all the defendants are so similarly situated as are
3 the plaintiffs. And so I think it would be --

4 THE COURT: Well, the plaintiffs have got nine.
5 They've got nine people they've got to talk about damages and
6 all that. And --

7 MR. CANTWELL: That's true, but they only have one
8 theory to pursue, right?

9 MS. KAPLAN: Your Honor, I'm going to borrow
10 something from that old '70s TV show, Let's Make a Deal. If we
11 can start Thursday morning, we'll cut ours to two and a half.
12 That gives them an extra half an hour.

13 THE COURT: All right. You all try to figure out how
14 to divide up the time. If you can't do it, I can do it. But I
15 think some of you need less than others. That's giving you all
16 four hours and she's taking two and a half. That's pretty
17 good.

18 MS. KAPLAN: I thought it was three and a half for
19 them.

20 THE COURT: Three and a half?

21 MS. KAPLAN: Three and a half for them, two and a
22 half for us.

23 THE COURT: All right.

24 MR. SPENCER: Maybe they should just be forced to
25 have an all-nighter just so it will be fair.

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1 MS. KAPLAN: Mr. Spencer, the days since I spent
2 all-nighters have long time passed.

3 (Laughter.)

4 Thank you, Your Honor.

5 THE COURT: Thank you all.

6 (Proceedings concluded, 5:11 p.m.)

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1 C E R T I F I C A T E

2 I, Lisa M. Blair, RMR/CRR, Official Court Reporter for
3 the United States District Court for the Western District of
4 Virginia, appointed pursuant to the provisions of Title 28,
5 United States Code, Section 753, do hereby certify that the
6 foregoing is a correct transcript of the proceedings reported
7 by me using the stenotype reporting method in conjunction
8 with computer-aided transcription, and that same is a
9 true and correct transcript to the best of my ability and
10 understanding.

11 I further certify that the transcript fees and format
12 comply with those prescribed by the Court and the Judicial
13 Conference of the United States.

14 /s/ Lisa M. Blair

Date: November 16, 2021

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